

Agenda

Yankton County Commission

6:00 PM, Wednesday, February 17, 2021

Commission Chamber

Yankton County Government Center

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Meeting chaired by: Cheri Loest, Chair

01 Call to order: 6:00 PM **PLEDGE OF ALLEGIANCE**

02 Roll Call: _____ Wanda Howey-Fox _____ Don Kettering
_____ Joseph Healy _____ Dan Klimisch _____ Cheri Loest

AGENDA ITEMS

No.	Time	Item Description	Presenter
03	6:00 PM	Abstain Financial Conflict of Interest (SDCL 6-1-17) Non-Financial Interest-Must State Reason for Abstaining	Commissioner Loest
04	6:05 PM	Approval of Agenda Public comment is a time for persons to address this body on any subject. No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken. Each person has up to three minutes to speak. There shall be no personal attacks against the members of this body, county staff, individual, or organizations. The Chair has the authority to enforce this policy. Failure to adhere to these rules may result in forfeiture of the remaining speaking time.	Public Comment
05	6:15 PM	Comprehensive Plan & Article 5 Amendment Discussion <ul style="list-style-type: none">• Minimum Lot Size• What Size CAFOs Need a CUP• What Size CAFO Needs Just a Manure Management Plan & Setbacks (Permitted Special Use)• Setbacks (New CAFO to Residence; New Residence to CAFO)• Right to Farm	Commissioners
06	6:20 PM	Public Comments	
07	6:25 PM	Commissioner Updates	Commissioners

WORK ORDER

YANKTON COUNTY PLANNING SUPPORT

This Work Order pertains to assistance requested by the Yankton County Commission, hereinafter referred to as the “County” and Planning and Development District III, hereinafter referred to as “District III.” The purpose of the work order is to assist the County in revising its Comprehensive Plan.

For the purposes of this agreement, the term “Comprehensive Plan” refers to the draft document that was under revision between January 2016 and March 2017.

District III Responsibilities

District III agrees to provide the following technical assistance services:

1. Provide copies of the zoning ordinances from counties with similar geographic, demographic, and economic situations. The ordinance language pertaining to agriculturally zoned districts will be highlighted;
2. Review and update Comprehensive Plan statistics, including data sets that are traditionally presented in such documents. The updates will utilize state and federal government sources. If appropriate, current estimates will be expressed, along with more dated information;
3. Prepare maps or graphics to illustrate statistical or geospatial information;
4. Revise planning considerations and any other language that pertains to County follow-up activities; and
5. Provide copies of the work products to the County.

District III will **NOT** engage in the following technical assistance actions:

1. Participate in County Planning Commission meetings or public hearings;
2. Attend any hearings or events involving the solicitation of public input or the formal adoption of the Comprehensive Plan;
3. Meet with County personnel on a regular basis. District III will interact with County staff as necessary to clarify particular questions or to review work products; and
4. Participate in any meetings, associated with the zoning ordinance, unless requested by the County in advance.

County Responsibilities

The County agrees to take the following actions:

1. Designate a staff representative and point of contact on the County Commission who will communicate with District III on work order activities;
2. Accept full responsibility for the content of the Comprehensive Plan and its ultimate official adoption process;
3. Coordinate any public information or input meetings, concerning the Comprehensive Plan;
4. Compensate District III for staff time in excess of 40 hours; and

5. Keep District III informed of any changes or situations that could impact the scope of timetable of the work order.

Timetable

District III anticipates that it will complete its work activities on or before June 30, 2021. District III reserves the right to extend the anticipated target date if other work demands arise, involving funding applications or time sensitive responsibilities associated with financial management.

District III will contact the County immediately if it foresees any challenges in meeting the June 30, 2021 target date.

Compensation

District III may bill the County for staff time, in excess of 40 hours, at the rate of \$55.00 per hour. The maximum billable amount is \$2,500, unless a higher figure is agreed to by the County. Payment is due upon the submission of all work products. The “trigger” for additional compensation would be a significant increase in staff time demands to complete the work.

Payment is also due if the June 30, 2021 target date arrives and the work is not completed because of a lack of follow through from the County.

Amendment and Termination

This Work Order may be amended by the mutual agreement of the County and District III. The Work Order may be terminated by either the County or District III at any time. District III is to be paid for any charged time upon termination.

Signatures

FOR: YANKTON COUNTY COMMISSION

BY: _____
Title Date

FOR: PLANNING & DEVELOPMENT DISTRICT III

BY: _____ Director _____
Date

~~Agriculture—The planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards along with the raising and feeding of livestock and/or poultry shall be considered an agricultural use. Grain elevators or Agricultural Product Processing Facilities shall not be considered an agricultural use if such use constitutes the main or principal use on a lot or parcel.~~

Agriculture Product Processing Facility - A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to; feed mills, ethanol plants, soy bean processing facilities, cheese plants, milk processors, packing plants and rendering facilities.

Animal Feeding Operation - An animal feeding operation is a lot or facility where ~~an established number of fifty or greater~~ animal units, ~~excluding aquaculture~~, are confined, stabled, fed, or maintained in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more facilities under common ownership are a single animal operation if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure.

For the purposes of these regulations, Animal Feeding Operations are divided into the following classes:

Class Animal Units

Class A 5,000 - 10,000

Class B 3,000 - 4,999

Class C 2,000 - 2,999

Class D 1,000 - 1,999

Class E ~~300-500~~ - 999

Class F ~~1-299~~ 50-499

~~Animal Feeding Operation or CAFO, New—An animal feeding operation or CAFO, (see definitions), constructed after the effective date of this ordinance or any subsequent amendment of applicable Articles or Sections. Operations in existence upon adoption or prior to future amendments may be considered a new operation if the facility is expanded to facilitate an increase of more than three hundred (300) animal units. Any new construction relating to an expansion must comply with the applicable performance standards. The Planning Commission and Board of Adjustment shall have the authority to decrease or waive any standard deemed contradictory to the intent of the zoning ordinance upon review and in accordance with the conditional use and variance process described herein.~~

Animal Units - A unit of measure for livestock equated as follows; one head is equivalent to animal units:

Cow, feeder, or slaughter beef animal, excluding calves under 300 pounds <u>including cow/calf pairs</u>	1.0 A.U.
Horse	2.0 A.U.
Mature dairy cattle, excluding dairy calves under 300 pounds	1.4 A.U.
Farrow-to-finish sows	3.7 A.U.
Swine in a production unit	0.47 A.U.

Nursery swine less than 55 pounds	0.1 A.U.
Finisher swine over 55 pounds	0.4 A.U.
Sheep or lambs	0.1 A.U.
Laying hens or broilers	0.033 A.U.
Ducks and/or geese	0.2 A.U.
Turkeys	0.018 A.U.

Animal Unit Conversion Table - A conversion table designed to integrate the definition of animal feeding operations with the animal unit definition. (Amended 06/08/06)

Species Animal	Class A	Class B	Class C	Class D	Class E	Class F
Cow, feeder or slaughter beef animal, excluding calves under 300 pounds including cow/calf pairs	10,000 - 5000	4,999 - 3,000	2,999 - 2,000	1,999 - 1,000	999 - 300 500	499 - 50
Horses	5,000 - 2,500	2,499 - 1500	1,499 - 1,000	999 - 500	499 - 150	
Mature dairy cattle, excluding calves under 300 pounds	7,143 - 3,571	3,570 - 2,143	2,142 - 1,429	1,428 - 714	713 - 214	
Farrow to finish sows	2,703 - 1,351	1,350 - 811	810 - 541	540 - 270	269 - 81	
Swine in a production unit	21,276 - 10,638	10,637 - 6,382	6,381 - 4,255	4,254 - 2,128	2,127 - 638	
Nursery swine less than 55 pounds	100,000 - 50,000	49,999 - 30,000	29,999 - 20,000	19,999 - 10,000	9,999 - 3,000	
Finisher swine over 55 pounds	25,000 - 12,500	12,499 - 7,500	7,499 - 5,000	4,999 - 2,500	2,499 - 750	
Sheep	100,000 - 50,000	49,999 - 30,000	29,999 - 20,000	19,999 - 10,000	9,999 - 3,000	
Laying hens	303,030 - 151,515	151,514 - 90,909	90,908 - 60,606	60,605 - 30,303	30,302 - 92090	
Ducks and/or geese	50,000 - 25,000	24,999 - 15,000	14,999 - 10,000	9,999 - 5,000	4,999 - 1,500	
Turkeys	555,555 - 277,777	277,776 - 166,666	166,665 - 111,111	111,110 - 55,555	55,554 - 16,666	

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Animal Waste Facility - A structure designed and constructed to store and/or process animal waste. Animal waste facilities include but are not limited to holding basins, lagoons, pits and slurry stores.

Concentrated Animal Feeding Operation (CAFO) - An animal feeding operation that meets one or more of the following criteria:

1. contains at least 500 animal units
2. utilizes a Liquid Manure System (see definitions)
3. utilizes environmentally controlled housing where the animals are contained in a thermostatically controlled environment
4. discharges pollutants into waters of the state through a manmade ditch, flushing system, or other similar man-made device
5. discharges pollutants directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation

Concentrated Animal Feeding Operation: An animal feeding operation that holds more than 1,000 animal units and smaller operations that discharge pollutants that impair a stream or other surface water are Concentrated Animal Feeding Operations (CAFOs).

Concentrated Animal Feeding Operation (CAFO), Existing – Concentrated animal feeding operations in existence prior to the effective date of this ordinance or any subsequent amendment of applicable Articles or Sections

Domesticated Large Animals - Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep, and mules.

Farm Building - All buildings and structures needed in agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm, and other family members.

Farm Drainage Systems - The term shall include all waterways, ditches, flood control, watershed, and erosion control structures and devices provided each individual system or structure comply with the applicable local, state, and federal regulations.

Farm Occupation - A business activity customarily carried out on a farm by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal farm operations, without the employment of more than two (2) persons not residing in the home, which does not cause the generation of additional traffic in the area. Farm occupations include, but are not limited to, seed sales and custom combining support facilities.

Farm Unit - All buildings and structures needed in an agricultural operation, including dwellings for owners, operators, and other family members.

Farm, Hobby - An activity carried out in rural residential areas, which includes the planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards. The raising and

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feeding of livestock and poultry shall be considered as part of a hobby farm if the area, in which the livestock or poultry is kept, is one (1) acre or more in area for every one (1) animal unit, and if such livestock does not exceed ten (10) animal units.

Farm, Ranch, Orchard - An area of not less than twenty (20) acres of unplatted land, or is a part of a contiguous ownership of not less than eighty (80) acres of unplatted land, which is used for growing usual farm products, vegetables, fruits, trees, and grain, and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle, hogs and sheep, and including the necessary accessory uses for raising, treating, and storing products raised on the premises; but excluding an Animal Feeding Operation. The processing and storage of raw agricultural products, such as grain elevators and ethanol plants, shall not be considered a farm, ranch or orchard if such constitutes the main or principal use on the lot or parcel.

Feeding Operation. The processing and storage of raw agricultural products, such as grain elevators and ethanol plants, shall not be considered a farm, ranch or orchard if such constitutes the main or principal use on the lot or parcel.

Farmstead - A place with empirical evidence of a previous farmstead including at a minimum foundations, structures, or a tree belt. For the purposes of this ordinance the Zoning Administrator or Planning Commission shall determine the eligibility of a farmstead as a building site as described within Section 513(3).

Game Farm - An area of five (5) acres or more, which is used for producing hatchery, raised game and non-domestic animals for sale to private shooting preserves.

Game Lodge - A building or group of detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged, with or without meals, and in which there are more than two (2) sleeping rooms.

Grain Elevator - Grain storage facilities, which are the principal and primary use of the lot. Said facilities are generally equipped with devices for housing and discharging significant quantities of grain. This definition does not include normal farm product storage and warehousing facilities such as grain bins and where such storage is an accessory use to the parcel.

Horticulture - The science or art of cultivating fruits, vegetables, flowers, and plants.

Horticulture Sales - The on-site retail sale of farm produce, floral, fauna, or similar items. The majority of the produce sold shall be seasonal in nature and grown on-site. An exception may be a cooperative venture between numerous producers.

Irrigation Systems - This term shall include all canals, ditches, piping, center pivot, and other methods utilized to irrigate cropland. This term does not include systems designed to land apply waste or water from animal feeding operations as defined herein. All irrigation systems shall comply with local, state, and federal regulations.

Manure System Definitions:

- Solid Manure System – Vast majority (>90%) of excreted manure will be maintained in a form that can be handled with a front-end loader and stacked without seepage under normal operating conditions. Example systems include floor-raised poultry, deep-bedded housing systems, and drylots
- Semi-Solid or Combination System – Default category for systems that do not fit the description of a solid or liquid manure system. Example systems include dairies having multiple types of housing and/or significant separation of solids prior to long-term storage, modestly bedded facilities, and multi-species operations.
- Liquid Manure System – Vast majority (>90%) of excreted manure will be stored in a form that – with or without agitation/mixing – can be handled with a common centrifugal pump under normal operating conditions. Example systems include slatted floor facilities and facilities where manure can be transferred via gravity.

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Nuisance - Any condition existing that is or may become injurious or dangerous to health or that prevents or hinders or may prevent or hinder in any manner the suppression of a disease.

Nursery, swine - A facility confining a specific number of small and/or young swine averaging ten (10) to fifty five (55) pounds in size.

Performance Standards – Criterion established for the purposes of:

1. Assigning proposed land uses to proper districts; and
2. Controlling noise, odor, glare, smoke, toxic matter, aesthetics, vibration, fire/explosive hazards generated by, or inherent in, uses of land or buildings.

Permitted Special Use – A use allowed in a zoning district subject to the applicable restrictions of that zoning district and additionally subject to certain restrictions for that specific use

Private Recreation Area - Any open space or recreational area, other than a public park, owned and operated or maintained in whole or in part for profit by a private individual(s), club or fraternal organization for members only, and may include therein one or more of the following activities: swimming, boat facilities, picnic area, tennis courts, outdoor skating rinks, athletic fields, walking, riding and cross-country skiing, snowmobiling, but does not include the racing of animals, motor vehicles, motorcycles or snowmobiles.

Private Shooting Preserves - An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game and/or larger game is released for the purpose of hunting, for a fee, over an extended season.

Ranch Building - See Farm Building.

Ranch Occupation - See Farm Occupation.

Ranch Unit - See Farm Unit.

Riding Stable - Any place that has more than fifteen (15) stalls or horse spaces to board, train, or provide recreational equine activities.

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Screening - A continuous fence, wall, compact evergreen hedge or combination thereof, supplemented with landscape planting, which would effectively screen the property which it encloses, and is broken only by access drives and walks.

Shelterbelt - Five or more rows of trees and/or shrubs that reduce erosion and protects against the effects of wind and storms.

Shelterbelt Restoration - The removal and replacement of two or more rows of trees or of trees totaling one-half acre or more, whichever is greater, in an existing shelterbelt.

Swine Production Unit - An operation confining a specific number of female breeding age swine for the purpose of farrowing. The operation shall farrow no more than an average of one-third (1/3) of the total herd at any one time and the total herd shall not farrow more than an average of two and one-half (2 ½) times within a twelve month period. All farrowed swine shall be relocated to an off-site nursery facility, as defined by this ordinance, at approximately ten (10) pounds or said swine shall be calculated as part of the total animal units.

Windbreak - Any non-opaque-manmade structure constructed of any material and erected adjacent to an animal feeding, calving, or other such lot of which its principal use is that of protecting livestock from the effects of the wind.

ARTICLE 5

AGRICULTURAL DISTRICT (AG)

Section 501 Intent

The intent of Agricultural Districts (AG) is to protect agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery.

Section 503 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in an Agricultural District (AG):

1. ~~Agriculture~~Any form of agriculture including the raising of crops, horticulture, animal husbandry, and poultry husbandry, and animal feeding operations, yet excluding concentrated animal feeding operations (CAFO) and commercial grain elevators;
2. Cemeteries;
3. Day cares, family;
4. ~~Dwellings, single family;~~
5. ~~4.~~ Farms, ranches or orchards as defined herein;
6. ~~5.~~ Farm buildings;
7. ~~6.~~ Historic sites;
8. ~~7.~~ Horticulture;
9. ~~1.~~ Manufactured homes, pursuant to Section 1509;
10. ~~8.~~ Modular homes;
11. ~~9.~~ Utility facilities; and
12. ~~10.~~ Veterinary services.

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Section 505 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in an Agricultural District (AG):

1. Accessory agricultural structures;
2. Customary water irrigation systems, other than manure irrigation equipment;
3. Farm drainage systems;
4. Home and farm occupations;
5. Roadside stands;
6. Shelterbelts;
7. Signs, banner;
8. Signs, directional on-site;
9. Signs, directional off-site;
10. Signs, easement and utility;
11. Signs, exterior off-site, pursuant to Article 14;

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12. Signs, flag;
13. Signs, name and address plate;
14. Signs, on-site;
15. Signs, real estate; ~~and~~
16. Stock dams; and
- ~~16.17.~~ Swimming pools.

Section 506 Permitted Special Uses

1. Dwellings, single-family including modular homes pursuant to Section 516;
2. Dwellings, two-family pursuant to Section 516;
3. Dwellings, additional farm in excess of one (1), pursuant to Sections ~~513(5)~~ 516 and 1509;
4. Manufactured homes, pursuant to Section 516 and 1509;
5. Animal Feeding Operations (AFOs) pursuant to Section 519(2,3)
6. Concentrated Animal Feeding Operation. Existing are allowed to expand to 125% of current operation size if the operation exists on an occupied farmstead or continuous property to the farmstead. The species of animals pertaining to the expansion must be that of the existing operation. Performance standards of Section 519 are applicable to the expansion with exception to the setbacks found in the *Facility Setback Chart* in Section 519(2).

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Section 507 Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in an Agricultural District (AG):

- ~~1. Animal feeding operations;~~
- ~~2.1.~~ Agricultural, fertilizer, and chemical sales and applications;
- ~~3.2.~~ Agricultural product processing facilities;
- ~~4.3.~~ Aquaculture;
- ~~5.4.~~ Auction yards and barns;
- ~~6.5.~~ Bars;
- ~~7.6.~~ Bed and breakfast operations;
- ~~8.7.~~ Buying stations;
- ~~8.~~ Churches;
9. Concentrated Animal Feeding Operations;
10. Construction services;
11. Day cares, group family home;
- ~~12.1.~~ Dwellings, additional farm in excess of one (1), pursuant to Sections ~~513(5)~~ and 1509;
- ~~13.12.~~ Exhibition areas;
- ~~14.13.~~ Fairgrounds;
- ~~15.14.~~ Fireworks sales;
- ~~16.15.~~ Game farms;

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- ~~17.16.~~ Game lodges;
- ~~18.17.~~ Golf courses;
- ~~19.18.~~ Grain elevators;
- ~~20.19.~~ Individual septic or sewage treatment facilities, pursuant to Section 1513;
- ~~21.20.~~ Indoor shooting/archery ranges;
- ~~22.21.~~ Kennels;
- ~~23.22.~~ Landing Strips;
- ~~24.23.~~ Manufacturing, light;
- ~~25.24.~~ Motor vehicle tracks or play areas;
- ~~26.25.~~ Manure irrigation;
- ~~27.26.~~ Municipal, commercial, or residential central containment, sewage disposal, treatment, or application sites;
- ~~28.27.~~ Open sales areas;
- ~~29.28.~~ Outdoor shooting/archery ranges;
- ~~30.29.~~ Parks;
- ~~31.30.~~ Portable processing plants;
- ~~32.31.~~ Private recreation areas;
- ~~33.32.~~ Private shooting preserves;
- ~~34.33.~~ Quarries, pursuant to Section 1515;
- ~~35.34.~~ Remote fuel depots;
- ~~36.35.~~ Repair shops, auto-body;
- ~~37.36.~~ Repair shops, motor vehicle and equipment;
- ~~38.37.~~ Riding stables;
- ~~39.38.~~ Rodeo arenas;
- ~~40.39.~~ Salvage yards;
- ~~41.40.~~ Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
- ~~42.41.~~ Spreading, injection, or other application of manure or animal waste generated from a concentrated animal feeding operation not permitted by Yankton County shall be required to submit a waste management plan for land application of said manure within the Agricultural District. The waste management plan shall be the same as for a permitted site, pursuant to 519(1C)(3), by an Animal Feeding Operation as described herein, or other livestock production means located outside of Yankton County pursuant to Section 519(11)(12);
- ~~43.42.~~ Swimming pools;
- ~~44.43.~~ Temporary construction facilities; ~~and~~
- ~~45.44.~~ Towers, pursuant to Article 25 & Article 26;
- ~~46.45.~~ Wildlife and game production areas; and
- ~~46.~~ Wind energy systems, pursuant to Article 26.
- ~~47.~~ Subdivisions as defined herein;

Section 509 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Planning Commission and Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or

conditional use in a Agricultural District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed. The review shall be heard at a regular meeting of the aforementioned bodies and may be required to adhere to the notification requirements as described in Section 1803(3-5).

Section 511 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 509 shall be prohibited.

Section 513 Minimum Lot Requirements

1. The minimum lot area shall be ~~twenty-two~~ (202) acres;
- ~~2. The minimum lot width shall be five hundred (500) feet;~~
- ~~3.2. The Zoning Administrator may allow a smaller minimum lot requirement where a permit for a single family home is requested on an existing farmstead site, as defined herein; Construction of a new residence must comply with the minimum setbacks as stated in Section 519(2), upon determining the class(es) of the Concentrated Animal Feeding Operation(s) where the new residence will be located.~~
- ~~4.3. Lots of record, as defined herein, existing prior to adoption of this ordinance may be developed pursuant to Article 16 and as approved by the Zoning Administrator;~~
- ~~5.1. An additional dwelling unit is allowed within the farmstead upon approval of the building permit application if it is to be occupied by other members of the family farm unit, provided the property is not transacted or prepared, platted, or described for transaction; and~~
- ~~6.1. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(c)(3), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.~~

Section 515 Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. This Section shall apply to all buildings and structures, including but not limited to decks and patios:

1. There shall be a front yard of not less than a depth of seventy five (75) feet;
2. There shall be a rear yard of not less than a depth of seventy five (75) feet;

3. There shall be two (2) side yards, each of which shall not be less than seventy five (75) feet;
4. Buildings and structures on corner lots as defined herein shall maintain two (2) front yards for the property abutting the road right-of-ways; and

5. The Zoning Administrator may allow construction of single and multi family dwelling units not in conformance with this provision only on those lands organized as a 501(d), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.
6. Water and sewer or sanitary drainage systems shall be installed by a licensed installer and shall comply with all applicable South Dakota Department of Environment and Natural Resources regulations.
- 5.7.

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Section 516 Residence Requirements

The requirements herein apply to all new residences including but not limited to single family dwellings, new family dwellings, and modular homes.

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1. Construction of any new residence must comply with the minimum setbacks as stated in Section 519(2), upon determining the class(es) of the Animal Feeding Operation(s) where the new residence will be located.
 - a. Waiver – The permit applicant may forego the minimum setbacks by signing a residential waiver request form acknowledging proximity to any CAFO. This waiver shall be filed with the permit application and a copy shall be mailed to all owners of operating CAFOs within the setback distance.
2. An additional dwelling unit is allowed within the farmstead upon approval of the building permit application if it is to be occupied by other members of the family farm unit, provided the property is not transacted or prepared, platted, or described for transaction; and
3. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(d), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.

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Section 517 Traffic Visibility

1. There shall be no obstructions, such as buildings, structures, grain bins, trees, wind breaks, baled agricultural products, or other objects within fifty (50) feet from the right-of-way.
2. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
3. ~~Structures, perennial, or similar vegetation planted on or immediately adjacent to a road right-of-way public shall be approved in writing by the Zoning Administrator prior to construction or planting.~~ No such vegetation between the heights of thirty (30) inches and ten (10) feet shall encroach upon the right-of-way at the time of planting or future growth. The Zoning Administrator reserves the right to refer such requests to Township Supervisors, the County Highway Superintendent, or other officials.

Section 519 Concentrated Animal Feeding Operation Performance Standards

Concentrated Animal Feeding Operations are considered conditional uses and shall comply with the conditional use process, all applicable state and federal requirements, and all requirements defined in this section.

1. **Conditional Use Permit Application Requirements.** The following shall be submitted for the consideration of a Concentrated Animal Feeding Operation Conditional Use Permit:

- a. Site description information:**

- i. The owners', managers', management company's or similar entities' name, address and telephone number.
- ii. A legal description of the site and proposed 911 address for the location.
- iii. The type and number of animals to be housed at the site.
- iv. Site diagram of all existing and proposed buildings and structures.
- v. Information on ability to meet designated setback requirements (Section 519(2)), including maps showing measured distances.
- vi. Information on the types of soils at the site, and whether there are any shallow aquifers and/or 100-year floodplain designations at or within one half mile of the proposed site.
- vii. Provide a Farm Service Agency wetland map.
- viii. Test boring location and test boring results *may* be required. The standards utilized by the South Dakota Department of Environment and Natural Resources for soil borings shall be followed.

- b. A facility management plan shall include:**

- i. The methods utilized to dispose of dead animals shall be identified and shall be in compliance with the South Dakota Animal Industry Board. Temporary dead animal storage or disposal sites shall be screened or located out of site from neighboring dwellings and the adjacent right-of-way.

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- ii. The methods utilized to control pests and flies.
- iii. An odor footprint model.
- iv. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of dust and odors generated by the facility. The applicant of any naturally ventilated or open style CAFO must plant a shelter belt of trees between the proposed CAFO and the affected residence, church, business or school. The shelterbelt shall run the length of the footprint within 250' of the facility, include a minimum of five rows of trees consisting of both evergreen and deciduous species, be planted in the first year of obtaining a conditional use permit. For three consecutive years, all trees that die must be replaced within one growing season. The shelter belt must maintain 90% survivability while the conditional use permit is active.
- v. A review of Industry Best Management practices including the use of bio-filters, pit additives, urine-feces separation systems, or other odor reduction technologies. Applicant shall identify which practices will be utilized.
- vi. A storm water management plan shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining dryer confinement areas to reduce odor production.
- vii. Road haul routes and road maintenance agreements for both the construction and operation of the facility shall be signed by the applicant and the local road authority and included in the CUP

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c. **Waste Management Plan Requirements.** An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented. The plan shall include the following:

- i. All CUP applicants must submit and receive approval for a waste management plan to the Department of Environment and Natural Resources prior to obtaining a CUP. The waste management plan will list all fields and acres that are in the waste management plan and shall include expected manure application rates.
- ii. A state general permit is required if any of the following situations are met.
 - 1. Any CAFO greater than or equal to 500 animal units.
 - 2. A general permit is required by the South Dakota Department of Environment and Natural Resources.
 - 3. A general permit is required by Yankton County as a condition of approval.
 - 4. The proposed site is located over a mapped shallow aquifer area as depicted on the Department of Environment and Natural Resources *First Occurrence of Aquifer Materials in Yankton County, SD*
- iii. Proposed maintenance of waste facilities.
- iv. Number and size of containment areas.
- v. Timeframe for removal of manure from storage containment.
- vi. Land application process and/or methods (surface, injection, etc.).

- vii. Legal description and map, including documented proof of area to be utilized for manure application.
- viii. If the applicant does not own all of the land which will be used for the spreading of waste, the applicant shall provide an enforceable lease, easement, or other written agreement as part of the application. The length of the agreement shall be such that the CAFO has adequate time to make other alternative arrangements in the event that the existing lease, easement, or other written agreement cannot be renewed.
- d. Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. This plan must be implemented upon the start of construction.
- e. The Yankton County Planning Commission, Board of Adjustment or the Planning Director may require additional information reasonably related to a concentrated animal feeding operation not contained in these regulations.

2. Facility Setback Requirements. New Animal Feeding Operations and waste facilities shall be located no closer than the following regulations prescribe.

The applicant(s) of an animal feeding operation may request the required setback to any residence other than the applicant, active church, business, or school be lessened. This request shall only be approved after the applicant obtains signed waivers from all property owners within the separation distance. Any authorized person, business or governmental entity that is within the separation distance may waive the separation distance. The written waiver(s) shall be permanently attached to the approved conditional use permit.

Facility Setback Chart						
<u>Class</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
<u>Animal Units</u>	<u>5,000</u>	<u>3,000</u>	<u>2,000</u>	<u>1,000</u>	<u>500</u>	<u>100</u>
	<u>to</u>	<u>to</u>	<u>to</u>	<u>to</u>	<u>to</u>	<u>to</u>
	<u>10,000</u>	<u>4,999</u>	<u>2,999</u>	<u>1,999</u>	<u>999</u>	<u>499</u>
<u>Solid Manure System</u>						
<u>Residence other than owner, active church, business, schools (miles)</u>	<u>2</u>	<u>1.25</u>	<u>0.75</u>	<u>0.50</u>	<u>0.50</u>	<u>0.25</u>
<u>Incorporated municipalities (miles)</u>	<u>2</u>	<u>1.25</u>	<u>.75</u>	<u>0.75</u>	<u>0.50</u>	<u>0.25</u>
<u>Semi-solid or Combination Manure System</u>						
<u>Residence other than owner, active church, business, schools (miles)</u>	<u>2</u>	<u>1.5</u>	<u>1</u>	<u>0.75</u>	<u>0.50</u>	<u>0.25</u>
<u>Incorporated municipalities (miles)</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>0.75</u>	<u>0.50</u>	<u>0.25</u>
<u>Liquid Manure System</u>						
<u>Residence other than owner,</u>	<u>2</u>	<u>1.25</u>	<u>1</u>	<u>0.75</u>	<u>0.50</u>	<u>0.25</u>

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active church, business, schools (miles)						
Incorporated municipalities (miles)	2	2	1	0.75	0.50	0.25
<i>Any Style Manure System</i>						
Existing swine feeding operation over 300 AU, only related to new swine feeding operations (miles)	1	1	1	1	1	0.5
Public wells (feet)	1,320	1,320	1,320	1,320	1,320	1,320
Private well (feet)	350	350	350	350	350	350
Private well (operator's) (feet)	250	250	250	250	250	250
Lakes, rivers and streams (feet)	1,320	1,320	1,320	1,320	1,320	1,320
Right-of-way line (feet)	330	330	330	330	330	330
Property line delineating a change in ownership (feet)	660	660	660	660	660	660
100 year flood plan	PROHIBITED					

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3. Manure application. New Animal Feeding Operations and waste facilities shall comply to the following:

- a. A review of weather conditions shall be conducted prior to application to minimize the potential for runoff and to mitigate effects upon neighboring properties.
- b. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.
- c. All liquid manure shall be injected to provide for better agronomic benefits, to reduce the potential for runoff, and to minimize odor. Liquid manure may be surface applied if approved by the Department of Natural Resources for emergency discharge only. Documentation of this approval shall be maintained by the operator and be available upon request by the Planning Department.
- d. If irrigation is used for dewatering a lagoon (gray water) basin, these rules apply:
 - i. Drops must be used on systems that disperse the liquid no higher than 18" off the ground if no crop is actively growing on the field.
 - ii. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.
 - iii. No runoff or diffused spray from the system onto neighboring property or public right-of-way will be allowed.
 - iv. No irrigation shall be applied when soils are water saturated, frozen, or covered with snow, or when other soil conditions would result in waste runoff.
 - v. No irrigation over FSA designated wetlands.
 - vi. No "big gun" type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.
- e. Manure should not be applied over frozen or snow covered ground.

- f. No pipes or drag lines may be permanently installed in the public right-of-way. If manure application will involve temporarily placing hoses or other equipment in a right of way (for example, in a road ditch or through a culvert), the producer must first obtain a Permit to Occupy Right of Way from the local road authority as well as written permission from the landowner.
- g. The producer, or agent acting on behalf of the producer, shall inspect the land application equipment, land application sites and irrigation equipment, if used, on a daily basis while land application of process wastewater or manure is occurring. This inspection is to ensure that the land application equipment is not leaking and runoff from the land application site is not occurring. If a discharge or leak is found where process wastewater or manure is reaching any surface waters of the state, flowing onto property not owned by the producer, or not included in the nutrient management plan, the producer is responsible for taking immediate steps to stop the discharge or leak and report the leak to the county zoning office, state DENR and the affected landowner. The producer shall keep documentation of these inspections so the Zoning Administrator can review them upon request or during an inspection

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Manure Application Setback Chart			
	Injection or Incorporated within 24 hours	Surface Applied	Irrigated
Public wells (feet)	1,320	1,320	1,320
Private wells (feet)	350	350	350
Private wells (operator's) (feet)	250	250	250
Lakes, rivers and streams (public drinking supply) (feet)	1,320	1,320	1,320
Lakes, rivers and streams (fisheries) (feet)	200	1320	1320
All public road right- of-ways (feet)	10	10	350
Municipalities (feet)	1,320	2,640	5,280
Residential zone areas (R1, R2, R3) (feet)	660	1,320	2,640
Residence other than operator's (feet)	330	660	1,320
100 year flood plain	PROHIBITED		

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3.

Animal Feeding Operations are considered conditional uses and shall comply with the Conditional Use Process, all applicable state and federal requirements, and the applicable requirements as defined in this section:

Class A (5,000—10,000) Section 519(1,2,3,4,5,6,7(a),8(a),9,10,11,12,13)

Class B (3,000—4,999) Section 519(1,2,3,4,5,6,7(b),8(b),9,10,11,12,13)

Class C (2,000—2,999) Section 519(1,2,3,4,5,7(c),8(c),9,10,11,12,13)

Class D (1,000—1,999) Section 519(1,2,3,4,5,7(d),8(d),9,10,11,12,13)

Class E (300—999) Section 519(2,3,4*,5,7(e),8(e),9,10,11,12,13)

Class F (1—299) NA

*If required by state law

1. ~~Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources or as amended by the State of South Dakota or the South Dakota Department of Environment and Natural Resources.~~
2. ~~Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. The Storm Water Pollution Prevention Plan required by the permit must be developed and implemented upon the start of construction.~~
3. ~~Animal confinement and waste facilities shall comply with the following facility setback requirements:~~
 - A. ~~Public Wells 1,000 feet~~
 - B. ~~Private Wells 250 feet~~
 - C. ~~Private Wells (Operator's) 150 feet~~
 - D. ~~Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet~~
 - E. ~~Lakes, Rivers, Streams Classified as Fisheries 1,000 feet~~
 - F. ~~Designated 100 Year Flood Plain PROHIBITED~~
4. ~~Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification. Examples of such management shall include at least:~~
 - A. ~~Proposed maintenance of waste facilities;~~
 - B. ~~Land application process and/or methods;~~

C. Legal description and map, including documented proof of area to be utilized for nutrient application; and

D. All CAFO's are required to obtain a South Dakota State General Permit that outlines the manure management practices that an operator must follow to prevent water pollution and protect public health.

5. New animal feeding operations, new CAFO's and waste facilities shall be setback six hundred and sixty-six (660) feet from a property line delineating a change in ownership and three hundred and thirty (330) feet from a right away line. Additionally, the applicant shall locate the operation $\frac{1}{4}$ of a mile or 1,320 feet from neighboring residential dwellings. The Planning Commission and/or Board of Adjustment may mandate setbacks greater than those required herein to further the intent of the Zoning Ordinance while protecting the public health, safety, and welfare.

6. New Class A and B Animal Feeding Operations shall be prohibited from locating within the area bounded by the City of Yankton, 431st Avenue, the Missouri River, and South Dakota Highway 50.

7. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from any Class I incorporated municipality or residentially zoned area bounded by the City of Yankton, 431st Avenue, the Missouri River and South of South Dakota Highway 50:

A. Class A 4 miles

B. Class B 2 miles

C. Class C 1 mile

D. Class D 2,640 feet

E. Class E 2,640 feet

8. New animal confinement and waste facilities shall be located no closer than $\frac{1}{2}$ mile from any Class II or III incorporated municipality, active church, or established R2 or R3 residential area as shown on the Official Zoning Map. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from a residential dwelling; one dwelling unit is allowed on the facility site. The owner(s) of an animal feeding operation and/or residential dwelling may request the required setback be lessened or waived in accordance with the variance procedures as detailed herein. Residential waiver request forms are obtainable from the Zoning Administrator. This waiver would run with the land and be filed with the Yankton County Register of Deeds.

A. Class A 2 miles

B. Class B 1.25 miles

C. Class C 2,640 feet

D. Class D 1,320 feet

E. Class E 1,320 feet

9. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.

10. Animal Feeding Operations shall prepare a facility management plan. The plan shall be designed to dispose of dead animals, manure, and wastewater in such a manner as to control odors or flies. The County Planning Commission and Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors shall be addressed in a management control plan:

A. An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented;

B. The methods utilized to dispose of dead animals shall be identified.

C. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of odors generated by the facility;

D. A storm water management section shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining dryer confinement areas to reduce odor production;

E. A solid manure storage plan detailing the number and size of containment areas and methods of controlling drainage to minimize odor production;

F. A description of the method and timeframe for removal of manure from open pens to minimize odor production;

G. The applicability, economics, and effect of Industry Best Management Practices shall be covered;

H. A notification section should be formulated by the applicant. It is to include the names, addresses, and phone numbers of all occupied residences and public

gathering places, within one-half (1/2) mile of applicant's manure application fields. The preferred hauling and application process shall be detailed and include timetables of probable application periods. Application of manure on weekends, holidays, and evenings during the warmer seasons shall be avoided whenever possible. Complaints could lead to having to give 48 hour notice in advance of manure applications. Annual notification advising of an upcoming 30 day window should be given.

I. A review of weather conditions shall be included reviewing the effect of climate upon manure application. This section shall also include the preferred times and conditions for application to mitigate the potential effects upon neighboring properties while outlining the least advantageous climatic conditions.

11. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is injected or incorporated within twenty-four (24) hours:

A. Public Wells 1,000 feet

B. Private Wells 250 feet

C. Private Wells (Operator's) 150 feet

D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet

E. Lakes, Rivers and Streams Classified as Fisheries 200 feet

F. All Public Road Right-of-ways 10 feet

G. Incorporated Communities 660 feet

H. A Residence other than the Operators 100 feet

12. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is irrigated or surface applied:

A. Public Wells 1,000 feet

B. Private Wells 250 feet

C. Private Wells (Operator's) 150 feet

D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet

E. Lakes, Rivers and Streams Classified as Fisheries 660 feet

- F. All Public Road Right-of-ways (Surface Applied) 10 feet
- G. All Public Road Right-of-ways (Irrigated Application) 100 feet
- H. Incorporated Communities (Surface Applied) 1,000 feet
- I. Incorporated Communities (Irrigated Application) 2,640 feet
- J. A Residence other than the Operators (Surface Applied) 330 feet
- K. A Residence other than the Operators (Irrigated Application) 750 feet

13. If irrigation is used for removal of liquid manure, dewatering a lagoon (gray water) basin, or any type of liquid manure holding pit, these rules apply:

- A. Drops must be used on systems that disperse the liquid no higher than 18" off the ground if no crop is actively growing on the field.
- B. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.
- C. No runoff or diffused spray from the system onto neighboring property or public right-of-way will be allowed.
- D. No irrigation of liquid on frozen ground or over FSA designated wetlands. No "big gun" type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.
- E. No "big gun" type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.

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Section 520 Conditional Use Permit for an Animal Feeding Operation Not Permitted if Applicant Applies for the Permit for the Purpose of Selling, Transferring, or Brokering.

The Board of Adjustment shall not grant a Conditional Use Permit for an Animal Feeding Operation, Concentrated Animal Feeding Operation, and/or waste facility if the Applicant is applying for the Permit for the purpose of selling, transferring, or brokering the Permit.

For the purposes of this Ordinance, any sale or transfer of the Permit from the Applicant to any other person or entity within ~~two (2)~~five (5) years of the date that the Permit is issued shall be considered to be prima facie evidence that such Permit was obtained for the purpose of selling, transferring or brokering the Permit. The Board of Adjustment may hear and grant exceptions to this rule in the case of unforeseen life events that may force the sale of an operation.

Any evidence that is presented by any person that any building permit, and/or Conditional Use Permit for an Animal Feeding Operation, Concentrated Animal Feeding Operation, and/or waste facility was sought for the purpose of selling, transferring, or brokering the Permit ~~may~~ shall be considered by the Zoning Administrator, Planning Commission, and/or Board of Adjustment in considering a new application for Conditional Use Permit, ~~and It~~ may be the basis for a denial or revocation of the application, building permit, and/or or a conditional use permit by the Board of Adjustment.

COUNTY	BEADLE	BROOKINGS	BROWN	CODINGTON	DAVISON	LINCOLN	MINNEHAHA	YANKTON (CURRENT)	YANKTON (PROPOSED?)
MEASUREMENT AG DISTRICT									
Right to Farm	Yes	Yes	No	Yes called AG Esmt		Yes	Yes	No	
Minimum Residence Req									
Setback Front Yard	75 Feet	100 Feet (50 NC record)	100 Feet	65 Feet	75 Feet	30 Feet**	30 Feet**	75 Feet	
Setback Rear Yard	75 Feet	50 Feet (50 NC record)	20 Feet	25 Feet	50 Feet	30 Feet	30 Feet	75 Feet	
Setback Side Yard	75 Feet	25 Feet (8 NC record)	20 Feet	25 Feet	50 Feet	7 Feet	7 Feet	75 Feet	
Minimum Lot Area	5 Acres	35 Acres with exceptions	40 Acres	35 Acres with exceptions	25 Acres*	1 Acre*	1 Acre*	20 Acres	
Max House Height	35 Feet					35 Feet except Farm & Wind	35 Feet except Farm & Wind		
Max Dwelling Density	1 Res/40 Acres	2 Res/35 Acres	1 Res/40 Acres	1 Res/QtrQtr not not already containing existing dwelling 2 Res/existing Farmstead	2 Res/existing Farmstead	1 Res/QtrQtr not not already containing existing dwelling 2 Res/existing Farmstead	1 Res/QtrQtr not not already containing existing dwelling 2 Res/existing Farmstead	2 Res/20 Acres	
Max Lot coverage all Structures	10 Percent	25 Percent		25 Percent					
Classes of CAFO Operations	Class A 1000 or more Class B 300 to 999	Class A 2000 or more Class B 1000 to1999 Class C 500 to 999 Class D 100 to 499 Class E 0 to 499	Class A 2000 or more Class B 1000 to 1999 Class C 300 to 999 Class D 40 to 299	Class 1 2000 or more Class 2 1000 to 1999 Class 3 50 to 499 * Class 4 50 to 499	Class A 1000 or more Class B 500 to 999	Class A See Chart Class B See Chart Class C See Chart Class D See Chart	Class A 2000 or more Class B 1000 to 1999 Class C 250 to 999 Class D 50 to 249	Class A 5000 to 10000 Class B 3000 to 4999 Class C 2000 to 2999 Class D 1000 to 1999 Class E 300 - 999 Class F 1 to 299	Class A 5000 to 10000 Class B 3000 to 4999 Class C 2000 to 2999 Class D 1000 to 1999 Class E 500 to 999 Class F 50 to 499
CAFO Class A Setback Residence	2.64 feet per AU up to 2000 AU then 1 foot per AU to a max 7920 feet	2640 Feet unless Waiver	3960 Feet plus 1000 Feet/1000 addn. AU	1 - 2640 Feet for 2000 to 7499 AU 1 - 3960 Feet for 7500 to 9999 AU 1 - 5280 Feet for over 10000 AU	2640 Feet	3960 Feet	3960 Feet	2 Miles (4 Miles)	
CAFO Class B Setback Residence	2.64 feet per AU with max of 999 AU	1760 Feet unless Waiver	2640 Feet	2 - 1760 Feet	1320 Feet	2640 Feet	1980 Feet	1.25 Miles (2 Miles)	
CAFO Class C Setback Residence		1320 Feet unless Waiver	2640 Feet	3 - 1320 Feet		1320 Feet	1320 Feet	2640 Feet (1 Mile)	
CAFO Class D Setback Residence		1320 Feet unless Waiver	1320 Feet	4 - 1320 Feet		1320 Feet		1320 Feet (2640 Feet)	
CAFO Class E Setback Residence		1320 Feet unless Waiver						1320 Feet (2640 Feet)	
CAFO Class F Setback Residence									
Manure Management	Application Specifics	Yes	Yes	Yes	Yes	Application specifics Class A & B reviewed By DENR rest can be reviewed if needed	Application Specifics	Yes	
Misc. Notes	under 1000 AU Permitted Use over 999 AU CUP	Aquifer specifics Class E Permitted Use	CUP for all	Class 1 -3 CUP Aquifer specifics	CUP for all	Class C & D permitted New Class A & B CUP	Class D Special Permit Waiver can reduce setbacks 50% if conditions met	In Lake Area in RED	
	Animal Waste 300 feet from Residences	Class A-D CUP NC - Non-conforming		*Located in Zone A-C of Aquifer Protection Overlay District	*3 Acre minimum for possible Variance	* Unless larger lot size is required by granting a CUP ** 50 Feet Major Arterial or Sec Line Rd.	* Unless larger lot size is required by granting a CUP ** 50 Feet Major Arterial or Sec Line Rd.		

COUNTY	BON HOMME	CLAY	HUTCHINSON	TURNER
MEASUREMENT AG DISTRICT				
Right to Farm	Not yet	Yes	Recorded Waiver	Yes
Minimum Residence Req				
Setback Front Yard	75 Feet	75 Feet	50 Feet	75 Feet
Setback Rear Yard	25 Feet	50 Feet	50 Feet	30 Feet
Setback Side Yard	25 Feet	30 Feet	50 Feet	30 Feet
Minimum Lot Area	5 Acres	2 Acres	20 Acres	2.5 Acres *
Max House Height		30 Feet	35 Feet	35 Feet **
Max Dwelling Density	1 Res/5 Acres	2 Res with CUP	2 Res with CUP & Family Farm Unit member	1 Res/QtrQtr not not already containing existing dwelling
Max Lot coverage all Structures		25 Percent	10 Percent	
Classes of CAFO Operations	CUP Class A 1000 or more Class B 0 to 999	Large See Chart Medium See Chart Small See Chart	2000 and above 1000 to 1999	Large See Chart Medium See Chart Small See Chart
CAFO Class A Setback Residence	1 mile signoff	Large 3/4 Mile (3960 Ft)	*Dwelling owner may request BOA to review BOA by variance, may waive or decrease separation distance	Large 3/8 Mile(1980 Ft)
CAFO Class B Setback Residence	300 Feet	Medium 1/2 Mile (2640 Ft)	*Dwelling owner may request BOA to review BOA by variance, may waive or decrease separation distance	Medium 1/4 Mile(1320 Ft)
CAFO Class C Setback Residence		Smail 1/4 Mile (1320 Ft)		Small 1/4 Mile (1320 Ft)
CAFO Class D Setback Residence				
CAFO Class E Setback Residence				
CAFO Class F Setback Residence				
Manure Management	yes	Storage & Application Specifics	Yes	Yes
Misc. Notes	under 1000 AU Permitted Use over 999 AU CUP Looking to make changes as we speak thinking a Class C	CUP Required	CUP Required Manure from residence Surface applied - 500ft Irrigation applied - 1000 ft BOA may allow smaller min. acres for single family home on existing farm *Setback distance for dwellings not shown 1320 Feet from res. dwelling for for Covered waste facilities 2640 Feet from res. dwelling for for Uncovered waste facilities	Large CUP Required Medium Permissive Use Small Permissive Use *Unless larger lot is required by granting a CUP ** No height limit for farm structures

CONCENTRATED ANIMAL FEEDING OPERATION – An animal feeding operation that meets the following State criteria for a large, medium, or small concentrated animal feeding operation:

1. A large concentrated animal feeding operation as described in Table 1.
2. A medium concentrated animal feeding operation as described in Table 1 and meets one of the following conditions:
 - a. Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
 - b. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
3. A small concentrated animal feeding operation as described in Table 1 and designated as a concentrated animal feeding operation by the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative, considering the following factors:
 - a. The size of the animal feeding operation and the amount of manure or process wastewater reaching waters of the state;
 - b. The location of the animal feeding operation in relation to waters of the state;
 - c. The means of conveyance of manure and process wastewater into waters of the state; and
 - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure and process wastewater into waters of the state.

Table 1. Number of Animals to Define Large, Medium, and Small Animal Feeding Operations and Concentrated Animal Feeding Operations			
Type of Animal Feeding Operation	Animal Feeding Operation and Concentrated Animal Feeding Operations		
	<u>Large</u> Animal Numbers Equal to:	<u>Medium</u> Animal Numbers Equal to:	<u>Small</u> Animal Numbers Less Than:
Dairy Cows (mature – milked or dry)	700 to 3,500*	200 to 699	200
Veal Calves	1,000 to 5,000*	300 to 999	300
Cattle other than mature dairy cows or veal calves ¹	1,000 to 5,000*	300 to 999	300
Swine (weighing more than 55 pounds)	2,500 to 12,500*	750 to 2,499	750
Swine (weighing less than 55 pounds)	10,000 to 50,000*	3,000 to 9,999	3,000
Horses	500 to 2,500*	150 to 499	150
Sheep or Lambs	10,000 to 50,000*	3,000 to 9,999	3,000
Turkeys	55,000 to 275,000*	16,500 to 54,999	16,500
Laying hens or broilers ²	30,000 to 150,000*	9,000 to 29,999	9,000
Chickens, other than laying hens ³	125,000 to 625,000*	37,500 to 124,999	37,500
Laying hens ³	82,000 to 410,000*	25,000 to 81,999	25,000
Ducks ²	5,000 to 25,000*	1,500 to 4,999	1,500
Ducks ³	30,000 to 150,000*	10,000 to 29,999	10,000
Geese	30,000 to 150,000*	10,000 to 29,999	10,000

*County imposed cap limit is five times the minimum number of animals for a large operation.

¹ Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

C. Animal Unit Ratio for Concentrated Animal Feeding Operations:

Lincoln Co.

TYPE OF ANIMAL:	Class A # of Animals	Class B # of Animals	Class C # of Animals	Class D # of Animals
Beef cow, steer, feeder, dairy heifer or fat beef animal	2,000 or more	1,000 to 1,999	500 to 999	200 to 499
Mature Dairy Cattle (milked or dry)	1,429 or more	714 to 1,428	357 to 713	143 to 356
Swine over 55 pounds	5,000 or more	2,500 to 4,999	1,250 to 2,499	500 to 1,249
Nursery Swine under 55 pounds	20,000	10,000 to 19,999	5,000 to 9,999	2,000 to 4,999
Farrow-to-Finish (sows)	540 or more	270 to 539	135 to 269	54 to 134
Horse	1,000 or more	500 to 999	250 to 499	100 to 249
Sheep	20,000 or more	10,000 to 19,999	5,000 to 9,999	2,000 to 4,999
Turkeys	111,111 or more	55,556 to 111,110	27,778 to 55,555	11,111 to 27,777
Hens, cockerels, capons, broilers	60,606 or more	30,303 to 60,605	15,151 to 30,302	6,060 to 15,150
Ducks or Geese	10,000 or more	5,000 to 9,999	2,500 to 4,999	1,000 to 2,499

13.07 Reserved.

13.08 Reserved.

13.09 Concentrated Animal Feeding Operations.

- A. Intent. It is the intent of this section to provide for a viable livestock industry within agriculturally zoned areas of Turner County, protect ground and surface waters and ensure that concentrated animal feeding operations are properly sited, maintained, and managed.
- B. Conditional Use Permit for Concentrated Animal Feeding Operations Required. Any person who owns, proposes to own, manages, or operates a Large Concentrated Animal Feeding Operation, as those terms are defined in these Ordinances, shall be required to obtain a Turner County Conditional Use Permit for Concentrated Animal Feeding Operation whenever a new Concentrated Animal Feeding Operation is proposed where one does not exist, or when a change in operation occurs as defined within these regulations. A change of ownership between family members does not constitute a change in operation. The burden of proof shall be on the Applicant to show they should be granted a Turner County Conditional Use Permit for a Concentrated Animal Feeding Operation.
- C. Aggregation of Commonly Owned Concentrated Animal Feeding Operations for the Purposes of Classification of Such Operations. For the purposes of considering Building Permits or Conditional Use Permits for the placement of animals and livestock within the agriculturally zoned areas of Turner County and determining the number of animals necessary to meet the criteria for a Large, Medium, or Small concentrated animal feeding operations, any person, company, business, or entity which owns or operates more than one building, location or site which has for its purpose the feeding or housing of animals within one mile of another building, location, or site which also has for its purpose the feeding or housing of animals also owned or operated by that same person, company, business, or entity shall be counted as one site and shall count toward the number of animals which are considered in determining whether the proposed building, location, or site is a Large, Medium, or Small concentrated animal feeding operation.
- D. Number of Animals for Concentrated Animal Feeding Operations: For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into Large, Medium, and Small operations. The following table defines each type of animal confinement (species) with the number of animals indicated. All animal classifications are based upon the standard animal numbers incorporated into the SD Department of Environment and Natural Resources (SD DENR) General Permit for feedlot operation.

Type of Concentration Animal Feeding Operation	<u>Large</u> Animal Numbers Equal to or More Than:	<u>Medium</u> Animal Numbers Equal to:	<u>Small</u> Animal Numbers Less Than:
Dairy cows (mature – milked or dry)	700	200 to 699	200

Veal Calves	1,000	300 to 999	300
Cattle other than mature dairy cows or veal calves ¹	1,000	300 to 999	300
Finisher Swine (weighing over 55lbs)	2,500	750 to 2,499	750
Nursery Swine (weighing less than 55lbs)	10,000	3,000 to 9,999	3,000
Farrow-to-Finish (sows)	540	270 to 539	270
Horses	500	150 to 499	150
Sheep or Lambs	10,000	3,000 to 9,999	3,000
Turkeys	55,000	16,500 to 54,999	16,500
Laying hens or broilers ²	30,000	9,000 to 29,999	9,000
Chickens, other than laying hens ³	125,000	37,500 to 124,999	37,500
Laying hens ³	82,000	25,000 to 81,999	25,000
Ducks ²	5,000	1,500 to 4,999	1,500
Ducks ³	30,000	10,000 to 29,999	10,000
Geese	30,000	10,000 to 29,999	10,000

¹ Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

² Concentrated animal feeding operation uses a liquid manure handling system.

³ Concentrated animal feeding operation uses other than a liquid manure handling system.

NOTE: Other animal types not listed in the above table may be considered on a case-by-case basis.

- B. Standards to be Utilized by the Board of Adjustment for Conditional Use Permits for Concentrated Animal Feeding Operations. The Turner County Board of Adjustment may, in its discretion, approve or deny applications for Conditional Use Permits for Concentrated Animal Feeding Operations. The decision of the Board of Adjustment shall be based on the standards for approval set forth below.

1. Required Minimum Setbacks and Separation Distances for New Concentrated Animal Feeding Operations; Exemption from Setback and Separation Distances Under Certain Limited Circumstances:

Legend

 TOWNSHIP


 SECTIONS

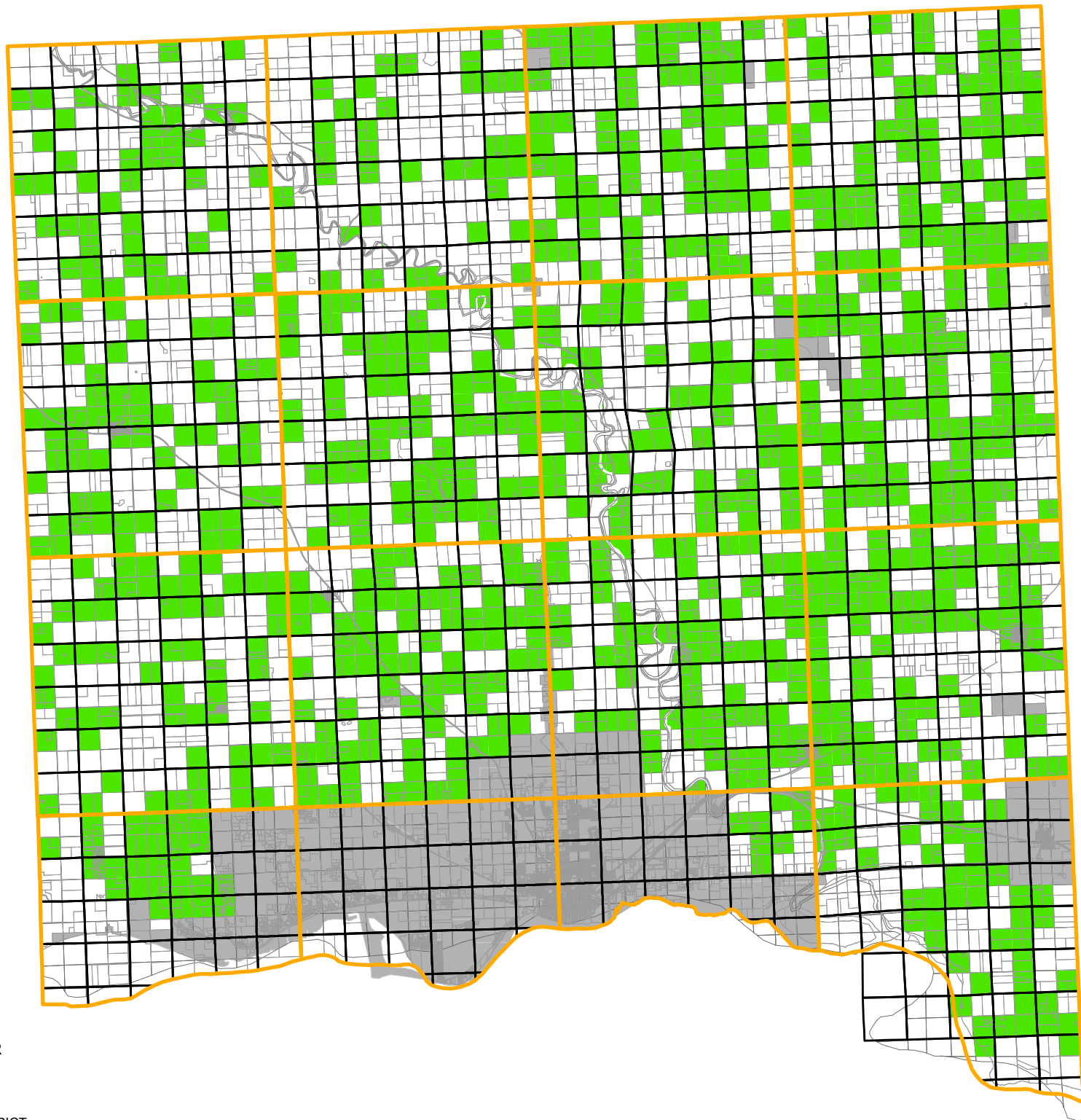
 Parcels

HOME WITHIN QUARTER

 NO

 YES

 NON AG ZONING DISTRICT

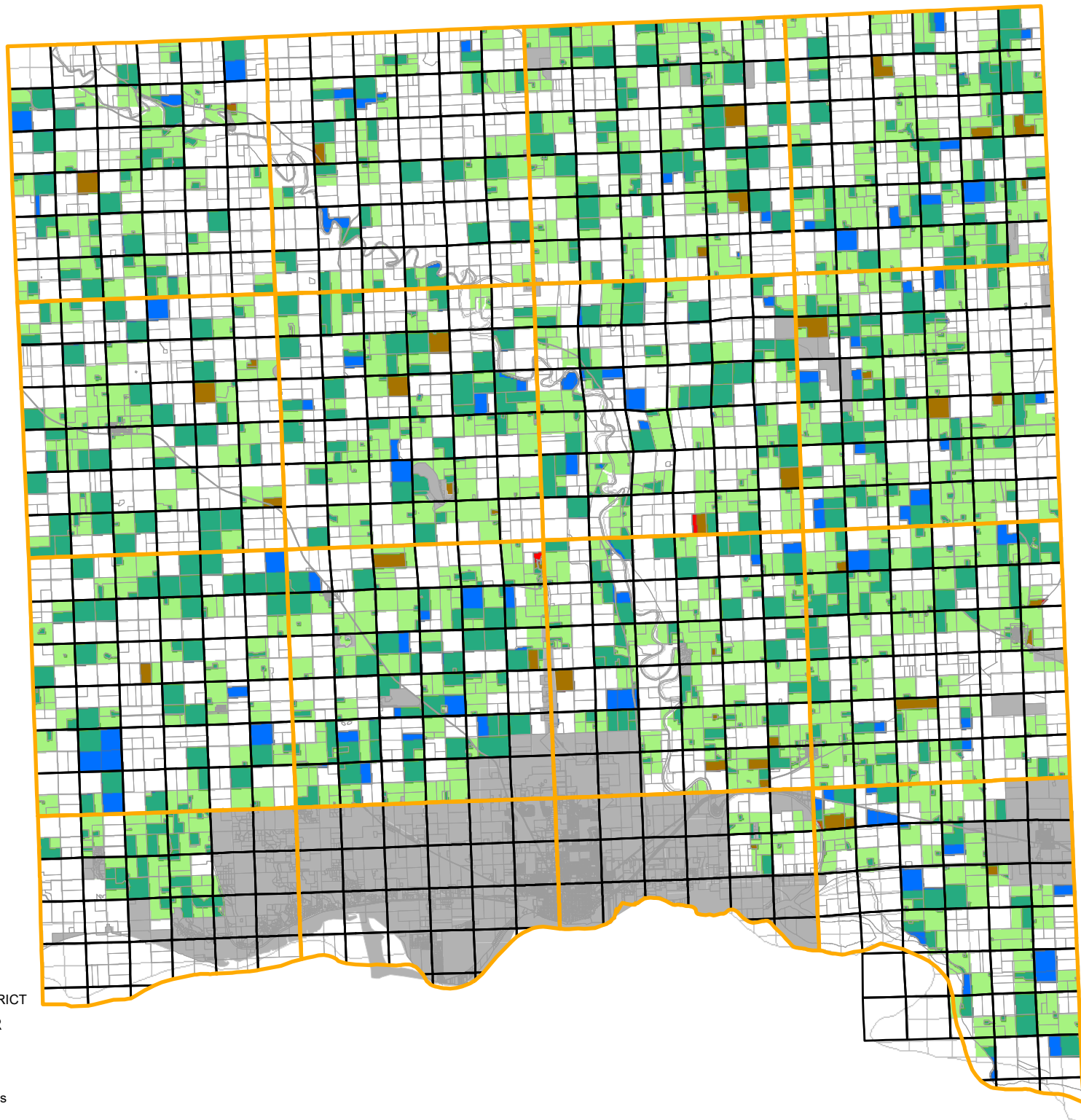


Legend

- TOWNSHIP
- SECTIONS
- Parcels
- NON AG ZONING DISTRICT

HOME WITHIN QUARTER

- NO
- YES
- multiple_nonag_dwelling
- nonag_dwelling



All the ordinances contain too many details and special circumstances to note below. Thus, all these are general guidelines.

	CUP required	Beadle		Brookings		Brown		Codington		Davison		Lincoln		Minnehaha		Yankton		Clay		Hutchinson		Turner	
	A.U.	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile	ft	mile
nursery	1	0	0	1,320	0.25	1,320	0.25	0	0	0	0	0	0	0	0	0	0	1,320	0.3	0		1,320	0.25
	50	0	0	1,321	0.25	1,320	0.25	1,320	0.3	0	0	0	0	660	0.125	0	0	1,320	0.3			1,320	0.25
	100	0	0	1,320	0.3	1,320	0.25	1,320	0.3	0	0	0	0	660	0.125	0	0	1,320	0.3			1,320	0.25
	200	0	0	1,320	0.3	1,320	0.25	1,320	0.3	0	0	1,320	0.25	660	0.125	0	0	1,320	0.3	0		1,320	0.25
	240	0	0	1,320	0.3	1,320	0.25	1,320	0.3	0	0	1,320	0.25	660	0.125	0	0	1,320	0.3	0		1,320	0.25
	250	0	0	1,320	0.3	1,320	0.25	1,320	0.3	0	0	1,320	0.25	1,320	0.25	0	0	1,320	0.3			1,320	0.25
	300	792	0.15	1,320	0.3	2,640	0.5	1,320	0.3	0	0	1,320	0.25	1,320	0.25	1,320	0.25	2,640	0.5	0		1,320	0.25
finisher	500	1,320	0.25	1,320	0.25	2,640	0.5	1,320	0.3	1,320	0.25	1,320	0.25	1,320	0.25	1,320	0.25	2,640	0.5			1,320	0.25
	960	2,534	0.48	1,320	0.25	2,640	0.5	1,320	0.3	1,320	0.25	1,320	0.25	1,320	0.25	1,320	0.25	2,640	0.5	0		1,320	0.25
2 finishers	1,000	2,640	0.5	1,760	0.33	2,640	0.5	1,760	0.33	2,640	0.5	2,640	0.5	1,980	0.375	1,320	0.25	3,960	0.8	0		1,980	0.375
	1,920	5,069	0.96	1,760	0.33	2,640	0.5	1,760	0.33	2,640	0.5	2,640	0.5	1,980	0.375	1,320	0.25			0		2,080	0.394
	2,000	5,280	1	2,640	0.5	3,960	0.75	2,640	0.5	2,640	0.5	3,960	0.75	3,960	0.75	2,640	0.5	above 1000, it varies by animal		0		2,180	0.413
	3,000	7,920	1.5	2,640	0.5	4,960	0.9	2,640	0.5	2,640	0.5	3,960	0.75	3,960	0.75	6,600	1.25			0		2,380	0.451
	4,000	7,920	1.5	2,640	0.5	5,960	1.1	2,640	0.5	2,640	0.5	3,960	0.75	3,960	0.75	6,600	1.25			0		2,580	0.489
	5,000	7,920	1.5	2,640	0.5	6,960	1.3	2,640	0.5	2,640	0.5	3,960	0.75	3,960	0.75	10,560	2			0		2,780	0.527
	7,500	7,920	1.5	2,640	0.5	9,460	1.8	3,960	0.75	2,640	0.5	3,961	0.75	3,961	0.75	10,560	2					3,280	0.621
	10,000	7,920	1.5	2,640	0.5	11,960	2.3	5,280	1	2,640	0.5	3,960	0.75	3,960	0.75	10,560	2			0		3,780	0.716
Max Setback		1.5		0.5		infinite		1		0.5		0.75		0.75		2							cont.

Blue requires a CUP									capped in A.U.	capped in A.U.		
A	1000+	2000+	2000+	2000+	1000+	2000+	2000+	5000-10000	1000-#AU*5	2000+	1000+	
B	300-999	1000-1999	1000-1999	1000-1999	500-999	1000-1999	1000-1999	3000-4999	300-999	1000-1999	300-999	
C		500-999	300-999	50-499*		500-999	250-999	2000-2999	<300		<300	
D		100-499*	<300*	50-999		200-499	50-249	1000-1999				
E		<499**	<300**					300-999				
F								1-299				
no restrictions	1-299			1-49	1-499	1-199	1-49					

Start Manure Restrictions:	300+ A.U.	100+ A.U.	300+ A.U.	800+ A.U.	500+ A.U.	500+ A.U.	50+ A.U.	300+ A.U.
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Rt-to-Farm Covenant: Yes	Yes	?	Yes (easement)	Yes	Yes	Yes	No	Yes
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Notes:	*water hazard **no pollution Differentiated in classes	*water hazard **no pollution Differentiated in classes	*aquifer distr Lists biofilters waiver if new residence within 1/2 mile of CAFO	<i>contradiction w/C needing cup</i>	B requires general water pollution control permit
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21-10-25. Costs assessed against plaintiff in certain farm operation nuisance actions.

If an action pursuant to § [21-10-1](#) is brought against a farm operation existing continuously prior to such action and located within one mile of the boundaries of the land use or occupancy of the plaintiff and the court finds there was no reasonable ground or cause for said action, the costs may be assessed to such plaintiff.

Source: SL 1987, ch 161.

21-10-25.1. State policy to protect agricultural operations from nuisance suits.

It is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The Legislature finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of §§ [21-10-25.1](#) to [21-10-25.6](#), inclusive, to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

Source: SL 1991, ch 183, § 1.

21-10-25.2. Certain agricultural operations protected--Poultry or livestock operations--Protected status transferable.

No agricultural operation or any of its appurtenances may be deemed to be a nuisance, private or public, by any changed conditions in the locality of the operation or its appurtenances after the facility has been in operation for more than one year, if the facility was not a nuisance at the time the operation began. Any agricultural operation protected pursuant to the provisions of this section may reasonably expand its operation in terms of acres or animal units without losing its protected status if all county, municipal, state, and federal environmental codes, laws, or regulations are met by the agricultural operation. The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of farming or by diminishing the size of the operation. The provisions of this section do not apply if a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

Source: SL 1991, ch 183, § 2; SL 1994, ch 162.

21-10-25.3. Agricultural operation defined.

As used in §§ [21-10-25.1](#) to [21-10-25.6](#), inclusive, the term "agricultural operation and its appurtenances" includes any facility used in the production or processing for commercial purposes of crops, timber, livestock, swine, poultry, livestock products, swine products, or poultry products.

Source: SL 1991, ch 183, § 3.

21-10-25.4. Damages due to water pollution or land overflow not affected by protected status.

The provisions of §§ [21-10-25.1](#) and [21-10-25.2](#) do not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries sustained by it as a result of the pollution or other change in the quantity or quality of water used by that person, firm, or corporation for private or commercial purposes, or as a result of any overflow of land owned by or in the possession of any such person, firm, or

corporation.

Source: SL 1991, ch 183, § 4.

21-10-25.5. Agricultural operation within municipality not protected.

The provisions of §§ [21-10-25.1](#) and [21-10-25.2](#) do not apply to any nuisance resulting from an agricultural operation located within the limits of any incorporated municipality on January 1, 1991.

Source: SL 1991, ch 183, § 5.

21-10-25.6. Frivolous action against agricultural operation--Costs and expenses recoverable.

In any nuisance action brought in which an agricultural operation is alleged to be a nuisance, and which is found to be frivolous by the court, the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in his behalf in connection with the defense of such action, together with a reasonable amount for attorney's fees.

Source: SL 1991, ch 183, § 6.

Agriculture - The planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards along with the raising and feeding of livestock and/or poultry in and/or out of an animal feeding operation shall be considered an agricultural use. Grain elevators or Agricultural Product Processing Facilities shall not be considered an agricultural use if such use constitutes the main or principal use on a lot or parcel.

Animal Feeding Operation: An animal feeding operation is a lot or facility where an established number of animal units are confined, stabled, fed, or maintained in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. ~~Two or more facilities under common ownership are a single animal operation if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure.~~

For the purposes of these regulations, Animal Feeding Operations are divided into the following classes:

Class	Animal Units
Class A	5,000—10,000 <u>300 or more</u>
Class B	3,000—4,999 <u>0-299</u>
Class C	2,000—2,999
Class D	1,000—1,999
Class E	300—999
Class F	1—299

Animal Feeding Operation ~~or CAFO~~, New - An animal feeding operation ~~or CAFO~~, (~~see definitions~~), constructed after the effective date of this ordinance or any subsequent amendment of applicable Articles or Sections. Operations in existence upon adoption or prior to future amendments may be considered a new operation if the facility is expanded to facilitate an increase of more than three hundred (300) animal units. ~~Any new construction relating to an expansion must comply with the applicable performance standards. The Planning Commission and Board of Adjustment shall have the authority to decrease or waive any standard deemed contradictory to the intent of the zoning ordinance upon review and in accordance with the conditional use and variance process described herein. (Amended May 19, 2020)~~

Animal Units - A unit of measure for livestock equated as follows; one head is equivalent to animal units:

Cow, feeder, or slaughter beef animal, excluding calves under 300 pounds <u>including cow/calf pairs</u>	1.0 A.U.
Horse	2.0 A.U.
Mature dairy cattle, excluding dairy calves under 300 pounds	1.4 A.U.
Farrow-to-finish sows	3.7 A.U.
Swine in a production unit	0.47 A.U.
Nursery swine less than 55 pounds	0.1 A.U.

Finisher swine over 55 pounds	0.4 A.U.
Sheep or lambs	0.1 A.U.
Laying hens or broilers	0.033 A.U.
Ducks and/or geese	0.2 A.U.
Turkeys	0.018 A.U.

~~Animal Unit Conversion Table—A conversion table designed to integrate the definition of animal feeding operations with the animal unit definition. (Amended 06/08/06)~~

Species Animal	Class A	Class B	Class C	Class D	Class E
Cow, feeder or slaughter beef animal, excluding calves under 300 pounds	10,000—5000	4,999—3,000	2,999—2,000	1,999—1,000	999—300
Horses	5,000—2,500	2,499—1500	1,499—1,000	999—500	499—150
Mature dairy cattle, excluding calves under 300 pounds	7,143—3,571	3,570—2,143	2,142—1,429	1,428—714	713—214
Farrow to finish sows	2,703—1,351	1,350—811	810—541	540—270	269—81
Swine in a production unit	21,276—10,638	10,637—6,382	6,381—4,255	4,254—2,128	2,127—638
Nursery swine less than 55 pounds	100,000—50,000	49,999—30,000	29,999—20,000	19,999—10,000	9,999—3,000
Finisher swine over 55 pounds	25,000—12,500	12,499—7,500	7,499—5,000	4,999—2,500	2,499—750
Sheep	100,000—50,000	49,999—30,000	29,999—20,000	19,999—10,000	9,999—3,000
Laying hens	303,030—151,515	151,514—90,909	90,908—60,606	60,605—30,303	30,302—92090
Ducks and/or geese	50,000—25,000	24,999—15,000	14,999—10,000	9,999—5,000	4,999—1,500
Turkeys	555,555—277,777	277,776—166,666	166,665—111,111	111,110—55,555	55,554—16,666

~~Concentrated Animal Feeding Operation: An animal feeding operation that holds more than 1,000 animal units and smaller operations that discharge pollutants that impair a stream or other surface water are Concentrated Animal Feeding Operations (CAFOs).~~

Farm, Ranch, Orchard - An area of not less than twenty (20) acres of unplatted land, or is a part of a contiguous ownership of not less than eighty (80) acres of unplatted land, which is used for growing usual farm products, vegetables, fruits, trees, and grain, and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle, hogs and sheep, and including the necessary accessory uses for raising, treating, and storing products raised on the premises; ~~but excluding an Animal Feeding Operation~~. The processing and storage of raw agricultural products, such as grain elevators and ethanol plants, shall not be considered a farm, ranch or orchard if such constitutes the main or principal use on the lot or parcel.

Permitted Special Use – A use allowed in a zoning district subject to the applicable restrictions of that zoning district and additionally subject to certain restrictions for that specific use

Windbreak - Any ~~non-opaque~~ manmade structure constructed of any material and erected adjacent to an animal feeding, calving, or other such lot of which its principal use is that of protecting livestock from the effects of the wind.

ARTICLE 5 AGRICULTURAL DISTRICT (AG)

Section 501

Intent

~~The intent of Agricultural Districts (AG) is to protect agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery.~~

The intent of Agricultural Districts (AG) is to protect agricultural lands and lands consisting of natural growth from incompatible land uses, promote and prioritize agriculture, and to limit residential, commercial, and industrial development for reasons of practicality, service delivery, and incompatibility with agriculture.

Section 502 Right to Farm

Prior to any building permit being issued for any single or two family residence or dwelling located in the Agricultural District (AG), a Right to Farm Covenant shall be filed on the parcel of land upon which the new or remodeled/renovated structure will be/is located. This covenant must also be filed on acreages of less than 20 acres at the time of transfer of ownership. Only the following shall constitute a Right to Farm Covenant: “RIGHT TO FARM NOTICE COVENANT You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of

crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to the issuance of a building permit, may not be removed from the record title without consent of the Yankton County Commission.

Section 503

Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in an Agricultural District (AG):

1. Agriculture;
2. Animal Feeding Operations meeting the definition of Class B (not subject to Section 519);
3. Cemeteries;
4. Day cares, family;
- ~~5. Dwellings, single family;~~
6. Farms, ranches or orchards as defined herein;
7. Farm buildings;
8. Historic sites;
9. Horticulture;
- ~~10. Manufactured homes, pursuant to Section 1509;~~
- ~~11. Modular homes;~~
12. Utility facilities; and
13. Veterinary services.

Section 505 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in an Agricultural District (AG):

1. Accessory agricultural structures;

2. Customary water irrigation systems, other than manure irrigation equipment;
3. Farm drainage systems;
4. Home and farm occupations;
5. Roadside stands;
6. Shelterbelts;
7. Signs, banner;
8. Signs, directional on-site;
9. Signs, directional off-site;
10. Signs, easement and utility;
11. Signs, exterior off-site, pursuant to Article 14;
12. Signs, flag;
13. Signs, name and address plate;
14. Signs, on-site;
15. Signs, real estate; and
16. Stock dams.

Section 506 Permitted Special Uses

1. Animal Feeding Operations meeting the definition of Class A pursuant to Section 519
2. Dwellings, single-family including modular homes pursuant to Section 516;
3. Dwellings, two-family pursuant to Section 516;
4. Dwellings, additional farm in excess of one (1), pursuant to Sections 516 and 1509;

Section 507

Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in an Agricultural District (AG):

- ~~1. Animal feeding operations;~~

2. Agricultural, fertilizer, and chemical sales and applications;
3. Agricultural product processing facilities;
4. Aquaculture;
5. Auction yards and barns;
6. Bars;
7. Bed and breakfast operations;
8. Buying stations;
9. Churches;
10. Construction services;
11. Day cares, group family home;
- ~~12. Dwellings, additional farm in excess of one (1), pursuant to Sections 513(5) and 1509;~~
13. Exhibition areas;
14. Fairgrounds;
15. Fireworks sales;
16. Game farms;
17. Game lodges;
18. Golf courses;
19. Grain elevators;
- ~~20. Individual septic or sewage treatment facilities, pursuant to Section 1513;~~
21. Indoor shooting/archery ranges;
22. Kennels;
23. Landing Strips;
24. Manufacturing, light;
25. Motor vehicle tracks or play areas;
26. Manure irrigation;
27. Municipal, commercial, or residential central
containment, sewage disposal, treatment, or application

sites;

28. Open sales areas;

29. Outdoor shooting/archery ranges;

30. Parks;

31. Portable processing plants;

32. Private recreation areas;

33. Private shooting preserves;

34. Quarries, pursuant to Section 1515;

35. Remote fuel depots;

36. Repair shops, auto-body;

37. Repair shops, motor vehicle and equipment;

38. Riding stables;

39. Rodeo arenas;

40. Salvage yards;

41. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);

~~42. Spreading, injection, or other application of manure or animal waste generated by an Animal Feeding Operation as described herein, or other livestock production means located outside of Yankton County pursuant to Section 519 (11)-(12);~~

~~43. Swimming pools;~~

44. Temporary construction facilities; and

45. Towers, pursuant to Article 25 & Article 26;

46. Wildlife and game production areas; and

47. Wind energy systems

pursuant to Article 26.

Section 509 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Planning Commission and Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in an Agricultural District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed. The review shall be heard at a regular meeting of the aforementioned bodies and may be required to adhere to the notification requirements as described in Section 1803(3-5).

Section 511 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 509 shall be prohibited.

Section 513 Minimum Lot Requirements

1. The minimum lot area shall be twenty (20) acres;
2. The minimum lot width shall be five hundred (500) feet;
- ~~3. The Zoning Administrator may allow a smaller minimum lot requirement where a permit for a single family home is requested on an existing farmstead site, as defined herein;~~
4. Lots of record, as defined herein, existing prior to adoption of this ordinance may be developed pursuant to Article 16 and as approved by the Zoning Administrator;
- ~~5. An additional dwelling unit is allowed within the farmstead upon approval of the building permit application if it is to be occupied by other members of the family farm unit, provided the property is not transacted or prepared, platted, or described for transaction; and~~
- ~~6. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(d), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.~~

Section 515 Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. This Section shall apply to all buildings and structures, including but not limited to decks and patios:

1. There shall be a front yard of not less than a depth of seventy five (75) feet;
2. There shall be a rear yard of not less than a depth of seventy five (75) feet;
3. There shall be two (2) side yards, each of which shall not be less than seventy five (75) feet;
4. Buildings and structures on corner lots as defined herein shall maintain two
(2) front yards for the property abutting the road right-of-ways; and

~~5. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(d), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.~~

Section 516 Residence Requirements

The requirements herein apply to all new residences including but not limited to single family dwellings, new family dwellings, and modular homes.

1. Construction of any new residences must be setback a minimum of two (2) miles from the nearest AG zoned land not owned by the applicant.
 - a. Waiver – The permit applicant may forego the minimum setback by obtaining a residential waiver request signed by all landowners within the two mile setback area in the AG zoned district. This waiver shall be filed with the permit application and a copy shall be mailed to all land owners within the setback distance in the AG zoned district.

2. Applicant shall sign the Right to Farm Covenant. This covenant shall be filed with the permit application and a copy shall be mailed to all landowners within the setback distance. This covenant shall be filed at the Register of Deeds. This covenant shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to the issuance of a building permit, may not be removed from the record title without consent of the Yankton County Commission.
3. An additional dwelling unit is allowed within the farmstead upon approval of the building permit application if it is to be occupied by other members of the family farm unit, provided the property is not transacted or prepared, platted, or described for transaction.
4. Water and sewer or sanitary drainage systems shall be installed by a licensed installer and shall comply with all applicable South Dakota Department of Environment and Natural Resources regulations.

Section 517 Traffic Visibility

1. There shall be no obstructions, such as buildings, structures, grain bins, trees, wind breaks, baled agricultural products, or other objects within fifty (50) feet from the right-of-way.
2. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
3. ~~Structures, perennial, or similar vegetation planted on or immediately adjacent to a road right-of-way public shall be approved in writing by the Zoning Administrator prior to construction or planting.~~ No ~~such~~ vegetation between the heights of thirty (30) inches and ten (10) feet shall encroach upon the right-of-way at the time of planting or future growth. The Zoning Administrator reserves the right to refer such requests to Township Supervisors, the County Highway Superintendent, or other officials.

Section 519 Animal Feeding Operation Performance Standards

Animal Feeding Operations meeting the definition of Class A are considered ~~conditional permitted special~~ uses and shall comply with the requirements set forth in this section. ~~the Conditional Use Process, all applicable state and federal requirements, and the applicable requirements as defined in this section:~~

1. Site description information:
 - a. The owners', managers', management company's or similar entities' name, address and telephone number.
 - b. A legal description of the site and proposed 911

- address for the location.
- c. The type and number of animals to be housed at the site.
- d. Site diagram of all existing and proposed buildings and structures.
- e. Information on the types of soils at the site, and whether there are any shallow aquifers and/or 100-year floodplain designations at or within one half mile of the proposed site.
- f. Provide a Farm Service Agency wetland map.
- g. Test boring location and test boring results may be required. The standards utilized by the South Dakota Department of Environment and Natural Resources for soil borings shall be followed.

2. Facility management plan:

- a. The methods utilized to dispose of dead animals shall be identified and shall be in compliance with the South Dakota Animal Industry Board. Temporary dead animal storage or disposal sites shall be screened or located out of site from neighboring dwellings and the adjacent right-of-way.
- b. A storm water management plan shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining dryer confinement areas to reduce odor production.
- c. Road haul routes and road maintenance agreements for both the construction and operation of the facility shall be signed by the applicant and the local road authority and included in the permit.

3. Waste Management Plan:

- a. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification.
- b. Proposed maintenance of waste facilities;
- c. Land application process and/or methods;
- d. Legal description and map, including documented proof (easements, etc.) of area to be utilized for nutrient application; and
- e. South Dakota State General Permit (if required by State)
- f. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.
- g. All liquid manure shall be injected to provide for

better agronomic benefits, to reduce the potential for runoff, and to minimize odor. Liquid manure may be surface applied if approved by the Department of Natural Resources for emergency discharge only. Documentation of this approval shall be maintained by the operator and be available upon request by the Planning Department.

- h. If irrigation is used for dewatering a lagoon (gray water) basin, these rules apply:
 - i. Drops must be used on systems that disperse the liquid no higher than 18” off the ground if no crop is actively growing on the field.
 - ii. No runoff or diffused spray from the system onto neighboring property or public right-of-way will be allowed.
 - iii. No irrigation shall be applied when soils are water saturated, frozen, or covered with snow, or when other soil conditions would result in waste runoff.
 - iv. No irrigation over FSA designated wetlands.

4. Setbacks:

- a. Public Wells 1,000 feet
- b. Private Wells 250 feet
- c. Private Wells (Operator’s) 150 feet
- d. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet
- e. Lakes, Rivers, Streams Classified as Fisheries 1,000 feet
- f. Neighboring residential dwellings in existence at or prior to the time of adoption of this ordinance 1,320 feet.
- g. Neighboring residential dwellings built after adoption of this ordinance, no setback.

~~Class A (5,000 — 10,000) ————— Section 519(1,2,3,4,5,6,7(a),8(a),9,10,11,12,13)~~

~~Class B (3,000 — 4,999) ————— Section 519(1,2,3,4,5,6,7(b),8(b),9,10,11,12,13)~~

~~Class C (2,000 — 2,999) ————— Section 519(1,2,3,4,5,7(c),8(c),9,10,11,12,13)~~

~~Class D (1,000 — 1,999) ————— Section 519(1,2,3,4,5,7(d),8(d),9,10,11,12,13)~~

~~Class E (300 — 999) ————— Section~~

~~519(2,3,4*,5,7(e),8(e),9,10,11,12,13) Class F (1 — 299) ————— NA~~

~~*If required by state law~~

~~1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review~~

~~and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources or as amended by the State of South Dakota or the South Dakota Department of Environment and Natural Resources.~~

- ~~2. Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. The Storm Water Pollution Prevention Plan required by the permit must be developed and implemented upon the start of construction.~~
- ~~3. Animal confinement and waste facilities shall comply with the following facility setback requirements:~~
 - ~~A. Public Wells 1,000 feet~~
 - ~~B. Private Wells 250 feet~~
 - ~~C. Private Wells (Operator's) 150 feet~~
 - ~~D. Lakes, Rivers, Streams
Classified as a Public
Drinking Water Supply
1,000 feet~~
 - ~~E. Lakes, Rivers, Streams Classified as Fisheries 1,000 feet~~
 - ~~F. Designated 100 Year Flood Plain PROHIBITED~~
- ~~4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification. Examples of such management shall include at least:~~
 - ~~A. Proposed maintenance of waste facilities;~~
 - ~~B. Land application process and/or methods;~~
 - ~~C. Legal description and map, including documented proof of area to be utilized for nutrient application; and~~
 - ~~D. All CAFO's are required to obtain a South Dakota State General Permit that outlines the manure management practices that an operator must follow to prevent water pollution and protect public health.~~

5. ~~New animal feeding operations, new CAFO's and waste facilities shall be setback six hundred and sixty six (660) feet from a property line delineating a change in ownership and three hundred and thirty (330) feet from a right a way line. Additionally, the applicant shall locate the operation ¼ of a mile or 1,320 feet from neighboring residential dwellings. The Planning Commission and/or Board of Adjustment may mandate setbacks greater than those required herein to further the intent of the Zoning Ordinance while protecting the public health, safety, and welfare.~~
6. ~~New Class A and B Animal Feeding Operations shall be prohibited from locating within the area bounded by the City of Yankton, 431st Avenue, the Missouri River, and South Dakota Highway 50.~~
7. ~~New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from any Class I incorporated municipality or residentially zoned area bounded by the City of Yankton, 431st Avenue, the Missouri River and South of South Dakota Highway 50:~~
 - A. ~~Class A~~ _____ 4 miles
 - B. ~~Class B~~ _____ 2 miles
 - C. ~~Class C~~ _____ 1 mile
 - D. ~~Class D~~ _____ 2,640 feet
 - E. ~~Class E~~ _____ 2,640 feet
8. ~~New animal confinement and waste facilities shall be located no closer than ½ mile from any Class II or III incorporated municipality, active church, or established R2 or R3 residential area as shown on the Official Zoning Map. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from a residential dwelling; one dwelling unit is allowed on the facility site. The owner(s) of an animal feeding operation and/or residential dwelling may request the required setback be lessened or waived in accordance with the variance procedures as detailed herein. Residential waiver request forms are obtainable from the Zoning Administrator. This waiver would run with the land and be~~

~~filed with the Yankton County Register of Deeds.~~

~~A. Class A ————— 2 miles~~

~~B. Class B ————— 1.25 miles~~

~~C. Class C ————— 2,640 feet~~

~~D. Class D ————— 1,320 feet~~

~~E. Class E ————— 1,320 feet~~

~~9. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.~~

~~10. Animal Feeding Operations shall prepare a facility management plan. The plan shall be designed to dispose of dead animals, manure, and wastewater in such a manner as to control odors or flies. The County Planning Commission and Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors shall be addressed in a management control plan:~~

~~A. An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented;~~

~~B. The methods utilized to dispose of dead animals shall be identified.~~

~~C. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of odors generated by the facility;~~

~~D. A storm water management section shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining dryer confinement areas to reduce odor production.~~

~~E. A solid manure storage plan detailing the number and size of containment areas and methods of controlling drainage to minimize odor production;~~

~~F. A description of the method and timeframe for removal of manure from open pens to minimize odor production;~~

~~G. The applicability, economics, and effect of Industry Best Management Practices shall be covered;~~

~~H. A notification section should be formulated by the applicant. It is to include the names, addresses, and phone numbers of all occupied residences and public gathering places, within one-half (1/2) mile of applicant's manure application fields. The preferred hauling and application process shall be detailed and include timetables of probable application periods. Application of manure on weekends, holidays, and evenings during the warmer seasons shall be avoided whenever possible. Complaints could lead to having to give 48-hour notice in advance of manure applications. Annual notification advising of an upcoming 30-day window should be given.~~

~~I. A review of weather conditions shall be included reviewing the effect of climate upon manure application. This section shall also include the preferred times and conditions for application to mitigate the potential effects upon neighboring properties while outlining the least advantageous climatic conditions.~~

~~11. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is injected or incorporated within twenty-four (24) hours:~~

~~A. Public Wells _____ 1,000 feet~~

~~B. Private Wells _____ 250 feet~~

~~C. Private Wells (Operator's) _____ 150 feet~~

~~D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply _____ 1,000 feet~~

~~E. Lakes, Rivers and Streams Classified as Fisheries 200 feet~~

~~F. All Public Road Right-of-ways 10 feet~~

~~G. Incorporated Communities 660 feet~~

~~H. A Residence other than the Operators 100 feet~~

~~12. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is irrigated or surface applied:~~

~~A. Public Wells
1,000 feet~~

~~B. Private Wells
250 feet~~

~~C. Private Wells (Operator's)
150 feet~~

~~D. Lakes, Rivers, Steams Classified as a
Public Drinking Water Supply
1,000 feet~~

~~E. Lakes, Rivers and Streams Classified as Fisheries
660 feet~~

~~F. All Public Road Right-of-ways (Surface Applied)
10 feet~~

~~G. All Public Road Right-of-ways (Irrigated Application) 100 feet~~

~~H. Incorporated Communities (Surface Applied)
1,000 feet~~

~~I. Incorporated Communities (Irrigated Application)
2,640 feet~~

~~J. A Residence other than the Operators (Surface Applied)
330 feet~~

~~K. A Residence other than the Operators (Irrigated Application) 750 feet~~

~~13. If irrigation is used for removal of liquid manure, dewatering a lagoon (gray water) basin, or any type of liquid manure holding pit, these rules apply:~~

- ~~A. Drops must be used on systems that disperse the liquid no higher than 18" off the ground if no crop is actively growing on the field.~~
- ~~B. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.~~
- ~~C. No runoff or diffused spray from the system onto neighboring property or public right of way will be allowed.~~
- ~~D. No irrigation of liquid on frozen ground or over FSA designated wetlands.~~
- ~~E. No "big gun" type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.~~

~~Section 520 Conditional Use Permit for an Animal Feeding Operation Not Permitted if Applicant Applies for the Permit for the Purpose of Selling, Transferring, or Brokering.~~

~~The Board of Adjustment shall not grant a Conditional Use Permit for an Animal Feeding Operation if the Applicant is applying for the Permit for the purpose of selling, transferring, or brokering the Permit.~~

~~For the purposes of this Ordinance, any sale or transfer of the Permit from the Applicant to any other person or entity within two (2) years of the date that the Permit is issued shall be considered to be prima facie evidence that such Permit was obtained for the purpose of selling, transferring or brokering the Permit.~~

~~Any evidence that is presented by any person that any Conditional Use Permit for an Animal Feeding Operation was sought for the purpose of selling, transferring, or brokering the Permit may be considered by the Board of Adjustment in considering a new application for Conditional Use Permit and may be the basis for a denial or revocation of the application or a conditional use permit by the Board of Adjustment.~~

Article 5 Changes and Discussion.

The Yankton County Zoning Ordinance, Article 5 – Agriculture, has been a hot topic of discussion for the past few years. I believe that there are a few main causes: a public that is becoming more and more disconnected with the reality of modern agriculture, anti-agriculture activist groups stoking fears and propaganda, and an unclear zoning ordinance that lacks protections for agriculture.

The root of most of the problems between agriculture and non-ag people is that most people are no longer connected to Ag in any substantial or direct way. Although a place like Yankton County, South Dakota is in the middle of ag-land and its main economy is driven by Ag, the average citizen living in town (making up the largest voting block) has no idea what is actually happening outside of the city limits. In Yankton, most people can think back to a grandfather or uncle or other family member that was involved in agriculture in the past. Many memories of the farm include the big red barn with a few cows, a pen full of pigs, and a small flock of chickens scattered around the farm yard. With this picturesque scene in their mind, the average city-dweller is understandably confused when they pass through the countryside and see large, modern livestock barns and large equipment buzzing through the fields. Not being directly involved in agriculture it may be hard to imagine how grandpa's big red barn and 160 acres transformed into what they see today. This is not to say that the average citizen has a negative bias towards modern agriculture, but it does make them susceptible to negative campaigns by various anti-agriculture groups.

Anti-agriculture groups capitalize on the disconnect between Ag and non-ag citizens. Groups like The Sierra Club, SRAP, and PETA put out hit pieces on agriculture that either cherry-pick bad actors to highlight as a norm, or flat out make up disinformation that shapes and influences the public perspective. They help to fund lawsuits against producers, and stoke and organize local groups like Quality of Life for South Dakota. Let there be no mistake, the goal of these groups is not “responsible” or “sustainable” agriculture. Their end goal is no animal agriculture and no modern agriculture. These groups are very happy and willing to play the long game, taking incremental change on the road to their goal.

Anti-ag groups’ strategy is to shift public policy over time through a strategy many political science majors may recognize as The Overton Window. It basically goes like this; the public on a spectrum of 1 to 20 supports policies that range from 9 – 11 and indeed the current policy is a 10 (Overton Window). A radical group wants policies that are a 20, but proposing such a policy would not be palatable to the majority of people to even consider. The group then finds a small group of vocal people that can be riled up to propose a policy at a 15. This group will likely be shot down, but they will have the effect of shifting the window from 9 – 11 with a policy of 10, to a window of 11 – 15 with a new policy needed somewhere in between. Once the new policy is set the process can start all over again with the new goal post out at 17, then 19, and on and on until the transformation is complete, no matter the starting point. In Yankton County we have seen a perfect example of this strategy. National groups successfully stoked a group of local citizens to organize and sue their farming neighbors over modern livestock facilities. This group spread the propaganda handed down to them and successfully elected three new officials they thought would implement their desired change. The fruits came to bear when a zoning proposal was brought forth by Commissioner Dan Klimisch. This proposal would radically change the zoning ordinance, and effectively ban any new livestock operations. The proposal met much public

backlash and was shot down. Although Dan's proposal failed in getting passed outright, it did have the effect of shifting the conversation about zoning. The radical minority pushing the changes have become even more frenzied, and many in the general public have come to think that the current zoning is failing the county and that concessions must be made between Dan's proposal and the current ordinance to keep the peace. Now we have a proposal on the table from Commissioner Joe Healy that takes elements of the old ordinance and adds in elements of Dan's proposal. It was said, by Joe, that both sides need to give and take, but his proposal only fits that description if you have shifted the window of possibilities away from the original towards the radical proposal fielded previously.

Before starting on the ordinances we need to agree on the pertinent definitions regarding Ag. The first is the definition of Agriculture. Some proposals recommend removing livestock and animal feeding from the definition, but I do not agree. Raising and feeding livestock has been just as much a part of agriculture as raising crops has been since the beginning of agriculture and nothing has changed now. The definition should include all animal feeding as well as raising crops.

Next is Animal Feeding Operation. The definition needs to strike the part about treating facilities under common ownership as one. This is necessary because it limits the ability of the next generation to take over current operations or build new facilities in the most practical locations. For example I have neighbors that live less than a mile from our current farm where we both feed cattle. Currently both farms are under 300 animal units. If my neighbor wanted to sell out and I would buy his farm to continue feeding cattle the same as him I would now be over the 300 animal units and anything else I did would now be subject to more intense regulation by the county. Animal feeding operation is also split into several classes for size. This is complicated and creates confusion when trying to figure out what applies to my operation because there are different regulations for different sizes and some are the same and some are different. To simplify I propose cutting the classes down to two, Class A and Class B. Class A is over 300 animal units, Class B is under 300 animal units. My understanding is that this is the threshold where the state starts requiring permits so I intend to match the county ordinance to the state, that way there is less confusion and you only have one threshold to worry about and one set of rules.

Animal feeding operations also don't need to be broken down into CAFO or AFO. The definitions are largely redundant and unnecessary. I believe that the anti-ag lobby has done a good job of demonizing CAFOs so separating it out is a way of getting harsher restrictions on the things they don't like more easily.

The animal units table should include cow/calf pairs just for simplification and practicality. The conversion table is unnecessary and should be stricken because we are all capable of doing a little math.

CAFO definition stricken for the same reason and previously stated.

The farm definition should include feeding animals, not exclude it. Even grandpa fed animals on his farm.

A definition for a Permitted Special Use should be added. This is one feature of Joe's proposal I agree with, which is consistent with the new state laws. This just means that a certain activity is considered a permitted use if it meets certain guidelines laid out in the ordinance. In regards to Ag this would allow producers the certainty of receiving a permit upon compliance. It would also reduce the workload on

our zoning office since they would not have to prepare redundant information for multiple meetings. Lastly it would save everyone involved vast amounts of time.

This is the bulk of the definitions I see fit for change. They seem common sense to most people I've talked to, and should not be controversial. Attempting to limit agriculture by changing the common understanding of it in the definitions is wrong.

Moving on to Article 5 itself I start with a rewrite of Section 501 Intent. My version essentially says the same thing as the original, just more clearly. This seems necessary since the last two major proposals attempt to turn the ag-zoned district into a residential district.

I have added Section 502 Right to Farm. This is the same right to farm proposal that was proposed at a recent meeting. It serves as a notice to anyone moving into the ag-zoned district and requires that the notice be filed with the land. This may need to be moved elsewhere in the ordinance for practicality or flow, but the intent is for it to be included, and for people to actually be aware of it and understand it.

In the permitted uses section I have added Animal Feeding Operations that meet the definition of Class B. This is consistent with the way the zoning ordinance has been applied over the last 10 or 20 years. The old Class F did not have any performance standards listed for it, and was treated as a permitted use. My proposal keeps this sentiment and makes it very clear that anything under 300 animal units is a permitted use.

I also removed anything to do with housing and residences from the permitted use section because they are clearly not compatible with agriculture as stated in the original ordinance and my proposal's intent, and clearly shown by the number of lawsuits ag-producers have had to endure over the last several years in this county.

I added Section 506 Permitted Special Uses. Included in this section are Class A animal feeding operations and residences. Each permitted special use refers to another section that outlines the requirements for that use. As I see it, these are uses that should be allowed if they meet the requirements.

In Section 507 Conditional Uses the parts stricken were merely moved to another section.

In Section 513 and 515 special carve outs were stricken, making application of the ordinance more straight forward and fair.

Section 516 Residence Requirements outlines what a new residence must do in order to locate in an ag-zoned district. A two mile setback is required from any ag-land not owned by the applicant. This is required because residences are not compatible with agriculture, and since this is an ag-zoned district the setback should be on the non-conforming use. The setback is from land, not feeding operations because once a house occupies an area that limits or prohibits any expansion of livestock to new ag-land. Setbacks from just livestock also have the effect of concentrating more animals in one spot since new housing under the previous proposals would box-in farmers and relegate their livestock to the same footprint they are currently. A waiver option is available for those that cannot provide their own two mile setback and would require the applicant to get signed permission to forego the setback from their neighbors. This would promote the new residents getting to know their neighbors and is basically the same waiver as in the current ordinance. The difference is that the non-conforming use (residence)

needs to obtain the setback waiver instead of the conforming use (agriculture). The right to farm covenant being signed and filed is also a requirement to provide additional protection to the farming community and to provide notice to the new resident. Opponents say that the right to farm does not provide any protection, but this is flat out wrong. In multiple states and cases the right to farm has held up when the farmer is acting according to the law, and basically the covenant acts as a permanent easement. It does not hold up when the farmer acts negligently. Example 1 the farmer sprays his field next to the neighbor's house, and the neighbor complains of odors and his flowers wilting. The farmer is not liable if he follows the guidelines of his pesticide. Example 2 the farmer sprays his field and hangs his boom over the neighbor's yard and kills the flowers and the grass. The farmer is liable because he encroached on the neighbor's property and damaged it. This is common sense and the courts have ruled that way in most cases that I have read, either way it adds one more layer of protection to the ag-community at no risk to the county. The last requirements of this section and section 517 are common to most proposals.

Section 519 is heavily amended to make it easier to apply and much simpler to follow. First, it only applies to Class A animal feeding operations. The requirements outlined are to basically make a business plan for the facility and present it to the zoning office prior to getting a building permit. The requirements generally follow the same requirements the state requests for a state permit. In essence you should be able to apply for a state permit and then submit the same information to the county to receive a county building permit. The biggest differences to be noticed are the setback requirements. There are two basic requirements, if it is a residence existing prior to this ordinance there is a 1/4 mile setback, and if it is a new residence there is no setback. This provides a separation for residences that were built under the current ordinance, and allows expansion for new livestock facilities along with housing. This is important because a residence should not have the power to put my farm out of business or limit my potential just because they exist. With the proposals in place regarding the right to farm and residence setbacks any new resident should be aware of the potential of agricultural activities and development in an ag-zoned district.

Agriculture/farming is a capital intensive activity that requires years of building and planning. A farm is not built overnight, and a lot of careful thought and planning is put in. Micro-managing the farm through zoning ordinances is a waste of time and money for the farmer, county, and tax-payers. With the amount of money and time it takes for a farmer to buy land, build livestock facilities, or operate equipment there is no incentive for him to do things the wrong way. In fact the market demands that things be done the most efficient, safe, and economical way possible.

Let's take the most controversial example: a new 2400 head finisher hog barn. The cost to the farmer for this new facility ranges from \$700,000 to \$1,000,000. The pigs housed in it and the feed are provided by an integrator. The farmer is contracted to take care of the pigs while they grow and to dispose of the manure. The integrators have requirements for the operations of the facility and provide the farmer support such as vets and other experts. The farmer must keep the hogs in good health so that they meet their production schedule and don't die. If the farmer does not feed them right, doesn't clean the barn, doesn't manage the manure, etc. the pigs will not grow decent and may even die resulting in a cost to the farmer or the integrator completely halting the operation. The farmers go to great lengths to promote the health of their barns, even showering upon entering and leaving the barn to prevent spread of disease. The cost of the facility itself is so great that most of the contract payments go to that, and often the largest source of income for the farmer is the manure. All of the waste from this facility is

captured and stored safely for future use, it's not allowed to leak or run-off because this would be a great loss to the farmer. The manure from this barn will go over 200 to 300 acres of ground. The farmer tests his soil and manure to figure out the best rate of return on the application. This is the same thing that happens with commercial fertilizer and they are usually applied at the same nutrient rates. The farmer has no incentive to over apply the manure because he would make more money by spreading it over more acres, also it seems completely absurd to think a farmer would dump or allow the manure to run off into a water source to dispose of it, as some groups claim. This is the same story whether you talk about a feedlot, hog barn, turkey barn, or sheep and cattle grazing on the prairie. Farmers must do it right or they will fail. It's really quite insulting for people that are not involved in agriculture to say we are not doing things right and then to try and force us to operate in a way that they think will be best.

One argument is that there are bad actors that cause us to need rules. This may be true to a point, but as stated before we can no longer afford to be a bad actor. The ones that operate in a way that harms the environment or animals won't last long just based on the economics alone. One other thing to consider is that farmers have a strong sense of preserving and passing down the land and operation from generation to generation, so ruining it would be self-destructive.

Some arguments for more residences in the ag-zoned district are that it is too hard to get financing on 20 acres, or banks won't loan on 20 acres, or the farmer's kid just wants to come back to farm and wants a small acreage to put a house on. The financing situation is just another argument based on false pretenses. A bank will absolutely loan you money on 20 acres. The only difference between 20 acres and 2 acres is that it will require more equity or a larger down payment for the 20 acres. If the county thinks that we need to rewrite ordinances to help people get a lower mortgage then out of equity we should come up with a scheme to subsidize the mortgage payments of everyone out by the lake in the R-1, R-2, and R-3 districts as well. The argument of the farmer's child coming back to farm is an easy remedy too. The farmer can give his kid 20 acres to live on and keep life estate for the earnings on that land. If the farmer doesn't have 20 acres to do this on then there's not much of a farm to come back to. If the farmer is worried about fairness amongst children or potential in-laws then that is a personal issue, and last I checked the county isn't involved in regulating family affairs.

We should also take into account the property rights of the people in the ag-zoned district. This is often used to argue against animal agriculture and for more residences. That is simply backwards. The purpose of zoning districts is to keep incompatible activities separated and placed where there will be the least conflict which promotes growth in all districts. Article 5's intent currently, and in my proposal, is to promote agriculture. When intrusive new residents move into ag-land, and have an overbearing zoning ordinance at their side, my property rights as a farmer diminish significantly. I can no longer build a livestock facility where I want to, or where it makes the most logistical sense, or the most economical sense. Instead I am forced to stay away from the new resident(s), and many times this means I am not allowed to build at all. So much for protecting agriculture. This double standard is infuriating, because everyone knows that there would be zero chance of me building a livestock facility in an R-1 district or a Commercial district or even a Rural Transitional district. In fact I own a chunk of land in a Rural Transitional district out towards the lake and I would like to put up a new hog barn, but pigs will fly before that's allowed. You also don't see housing as a permitted use in any commercial or lakeside commercial district where a residence is required to get a CUP, and there is no setback requirement for a factory to stay away from housing. Why commercial businesses located in their respective districts are allotted more protection and more rights than agriculture is in its district?

With a zoning ordinance someone will not be able to do exactly what they want to do with their land no matter how the ordinance is structured. All we can do is be as consistent and fair as possible, and right now the ordinance is neither, but it is much more fair and consistent than the previous two proposals. I believe my proposal brings about much more fairness to the ordinances. It would allow our largest economical driver to continue to grow, and it would allow informed and understanding residents to cohabitate in the ag-zoned district.

Chris Barkl

From: Intuvia Solutions CMS [<mailto:noreply@intuivosolutions.com>]
Sent: Thursday, February 4, 2021 6:50 AM
To: Gary Vetter <gary@co.yankton.sd.us>
Subject: New Contact Us Message

You have received a Contact Us Message from your website.

Name: Paige D. Herrig
Address: 44628 308 Street
City/State/Zip: Mission Hill, South Dakota 57046
Email: paigeherrig78@gmail.com
Phone: 6057605093

Message:

This email concerns the Friday, February 5th County Commission meeting to discuss Article 5. Because of legitimate COVID concerns, like many county citizens, I will not be attending the meeting. I am disappointed that lack of meeting attendance has been twisted to mean that people don't care. Attendance at this meeting will be further diminished by the fact that Friday is a work day for most people. I am further disappointed because county officials are misconstruing or allowing Article 5 concerns to be misconstrued as anti-farming, anti-ag, or anti-livestock; and that concerned citizens want all forms of agriculture eliminated from Yankton County. This is absolutely untrue. In our small rural community, people understand the importance of agriculture, even if they are unaware of modern Ag practices; and, it is their desire that Yankton's agriculture sector remains strong, while at the same time being safe and responsible. Instead of dividing the county into factions, county government should consider the concerns on both sides of Article 5 and take the necessary actions to unite the county. It is untrue that the citizens who are concerned about Article 5 are those who do not understand how agriculture has changed over the years. It is the people who do understand the changes that are concerned. They are not opposed to modern Ag, but instead are concerned about the consequences that can result from the actions of a few "bad actors" that refuse to embrace the most up to date technology and do not employ the best management practices, resulting in unsafe and irresponsible operations. Too often we have heard it stated that the county cannot mandate certain safety technologies because doing so would cause a reduction in profits. I'm not certain that it is the County's responsibility to ensure the profitability of Yankton County businesses. If someone can afford to invest from \$750,000 to \$1,000,000 for an Ag operation, they should be able to increase their investment by 2% to 3% in order to incorporate modern safety technology. Yankton County does not need a "Right to Farm" law. Yankton County needs zoning ordinances that will promote agriculture, keep our agriculture sector strong; and, at the same time mandate that agricultural operations are to be safe and responsible in order to protect the County's environment, the County's citizens, and the property rights and property values of both farmers and non-farmers alike. Please read this email at Saturday's meeting. Respectfully, Paige D. Herrig

From: Intuvio Solutions CMS <noreply@intuviosolutions.com>

Sent: Thursday, February 4, 2021 8:43 AM

To: Cheri Loest <cheri@co.yankton.sd.us>

Subject: New Contact Us Message

You have received a Contact Us Message from your website.

Name: Jeff Larson

Address: 183 Hideaway RD

City/State/Zip: Mission Hill, South Dakota 57046

Email:

Phone:

Message:

Yankton County Commissioners, I am a Yankton County resident, and I am firmly against Article 5 and the "Right to Farm Law". I am not against farming, but I am against industrial livestock operations and the unfettered lawlessness that comes with it. These laws make it impossible for the farmers to held accountable for poor management practices of their CAFO operations. Other laws that are being discussed, like adding more classes of permits that do not need approvals or CUPs are simply irresponsible. These large operations are health hazards, environmental hazards, and drive the value of rural residents and family farms down. It is also irresponsible and a gross misuse of power to use the pandemic and meetings held during the workday to forward your agenda and state that there isn't any opposition to your proposed changes. The commissioner's duty is to represent the will of the entire county, not just a few special interests or farmers that are in business with Big Ag. Please read this letter at the County Commission meeting on February 5th, 2021 @ 9AM. Jeff Larson Mission Hill

From: Intuvio Solutions CMS [<mailto:noreply@intuviosolutions.com>]
Sent: Wednesday, February 3, 2021 8:45 PM
To: Gary Vetter <gary@co.yankton.sd.us>
Subject: New Contact Us Message

You have received a Contact Us Message from your website.

Name: Allen Sinclair
Address: 44093 300th St
City/State/Zip: Utica, South Dakota 57067
Email: sinclair@valyousat.net
Phone: 16056656756

Message:

Greetings Commissioners: The proposed zoning changes cause me to contact you. I have several concerns: (1)right to farm (2)upper AU numbers (3)setbacks from residences and several other issues. You seem to be ignoring the recent Planning Commission suggestions for updating the zoning ordinances---giving the Public the impression that you only listen to the “Hog Barn” folks. The “Silent Majority” is watching and waiting---I wonder what they are thinking? Please enter this into the record—thank you, Allen Sinclair.

From: Intuvio Solutions CMS <noreply@intuviosolutions.com>

Sent: Wednesday, February 3, 2021 7:05 PM

To: Cheri Loest <cheri@co.yankton.sd.us>

Subject: New Contact Us Message

You have received a Contact Us Message from your website.

Name: cathy weiss

Address: 43905 291 st

City/State/Zip: menno, South Dakota 57045

Email:

Phone:

Message:

So I read through Chris Barkl's proposal. You guys chose him over all the other people on the list because we were all "too polarized in one direction or other". No, he's not polarized at all. Just a few thoughts: Chris Barkl's Proposal(s): Throw it all out. On the concept of Who Was There First: I like that idea--always have. I grew up with the I Was There First Doctrine. I agree with the idea of giving preference to the landowner who was there first. If the producer was there first, he should get preference. If the homeowner was there first, they should get preference. But it doesn't seem to work that way here. When my husband and I bought our place back in '91, it was considered "rural residential"; now it is zoned agriculture. All of the land abutting ours has changed hands at least twice (one parcel might be three times) since we moved in, so we were there long before any of those owners bought that land. Our situation is not unique--there are many other people with residential small holdings across the county who have been there since before zoning, and many who have lived on their properties longer than the owners of neighboring property. Farm land does change hands. When there is a conflict over siting a CAFO, why don't the residential owners get any consideration if they were there first? Residential use of unincorporated county land predates zoning and deserves to be protected as much as agriculture use. Setbacks: Keep the classes and setbacks in Joe's version Quarter mile for class F I'm okay with the idea of tying setbacks into types of manure as long as it is kept simple and enforceable. Right to farm: I am not in favor of the right to farm covenants presented by Chris Barkl. I think it goes too far and will only result in more bad blood and litigation. If you must have a covenant, I would suggest the following changes/additions: First, strike the part about requiring someone to sign any covenant before they can get a building permit to remodel or renovate their house. Not only is it deliberately punitive and mean-spirited, it will result in people not getting permits. Any farmer buying land near an existing residence shall sign a covenant that acknowledges the right of the resident to live there. The farmer shall also acknowledge that whoever applies field chemicals, fertilizers, pesticides, or herbicides on their land is responsible for any damage to the neighboring residential land. By law, applicators are liable for chemical drift. These covenants shall not supersede any local, state, or federal law or ordinance, nor shall they take away anyone's legal rights, including the right to sue.

From: Frank Kloucek [<mailto:fk loucek@hotmail.com>]

Sent: Sunday, February 7, 2021 1:00 PM

To: Cheri Loest <cheri@co.yankton.sd.us>; Don Kettering <donk@co.yankton.sd.us>

Subject: Right to Farm Laws declared Unconstitutional Time after Time after Time.....

LAWN CHAIR AG ATTORNEY

Agricultural Law, Analysis, and Random Thoughts

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Court of Appeals Finds State's Right-to-Farm Law is Unconstitutional As Applied

[JANUARY 11, 2017](#) / [PAULGOERINGER](#)



This post is not legal advice.

All fifty states have some version of a right-to-farm law that provides defenses to agricultural producers for lawsuits they are committing a nuisance in his/her operations. In November 2016, the Court of Appeals of Iowa upholds a lower court's ruling that Iowa's right-to-farm law is unconstitutional as applied to a neighbor claiming a neighboring hog farm is a nuisance and awarding damages to the neighbor. For those unaware, finding a state's right-to-law unconstitutional as applied to a neighbor is a unique to Iowa. Iowa's courts have found the state's right-to-farm law is unconstitutional when applied to neighbors there first. At this point, no states have followed Iowa's lead and found their state's right-to-farm laws unconstitutional as applied to neighbors there first.

Background

The McIlrath family bought the farm in 1971 and eventually gifted one-acre tracts to their son who built a home near his parents' home. Prestage Farms built a 2496-confined hog facility in 2012. This confined hog farm built 2200 feet from the McIlraths' home.

In 2013, Mrs. McIlrath brought a nuisance lawsuit against the confined hog farm and sought damages. At the trial, McIlrath testified as to the smell of the hog farm when the wind blew from the southwest, how strong the odor was, and how often that sharp odor was around. She also had neighbors testify as to the impact of the odor on their properties. Finally, she had the testimony or depositions of experts concerning the actions Prestage could have taken to lessen the impact from odors.

Prestage Farms claimed that the Iowa right-to-farm law provided the farm immunity from the nuisance lawsuit. Prestage also had neighboring landowners who testified that the odor to be unreasonable or offensive. State officials also testified to demonstrate the farm was in compliance with applicable laws. Finally, experts testified the farm was omitting little gas and the types of the best management practices the farm was utilizing.

The trial court found that Iowa's right-to-farm law was unconstitutional as applied in this case. The jury returned a verdict awarding damages (close to \$525,000), and the farm failed to use existing generally accepted

management practices that were reasonable for the farm to utilize. The farm appealed to the Court of Appeals of Iowa.

Iowa's Right-to-Farm Law Unconstitutional As-Applied

Iowa's right-to-farm law operates like other states' right-to-farm laws. In Iowa, an animal feeding operation (Prestage Farms is one) cannot be found to be a public or private nuisance, unless the farm failed to comply with federal or state law or regulation that applies to the farm or both of the following:

1. The farm is unreasonable and for substantial periods of times interferes with a neighbor's use, and
2. The farm failed to use existing prudent generally accepted management practices reasonable for the farm.

If the farm meets all the qualifications, then it is protected under the right-to-farm law.

A prior ruling by the Iowa Supreme Court (*Gacke v. Pork Xtra, L.L.C.*) held the state's right-to-farm law could be unconstitutional when applied. In that case, the Iowa Supreme Court found property owners existing before the arrival of the farm have no remedy. These prior existing property owners bear the brunt of the nuisance created by the farm and receive no real benefit. The situation would be different for someone coming after the establishment of the farm, that person could potentially receive the property at a discount, take steps to mitigate the impact of the nuisance, or just not buy near the farm. In the view of the Iowa Supreme Court, the right-to-farm law gives a farm operator the ability to use his/her property without any regard for the rights of neighbors. In *Gacke*, the Iowa Supreme Court found the law to be unconstitutional as applied to *Gacke*, but state there might be situations when the right-to-farm law would be constitutional.

The Court of Appeals agreed that the right-to-farm law was unconstitutional as applied to Mrs. McIlrath. According to the court, the factual situation in this case and *Gacke* are very similar. In both cases, we had property owners who had lived on the property before the arrival of the confined animal facility and allowing the farm to continue as a nuisance would deprive property owners, like McIlrath, of a remedy and place the burden of the nuisance on them. The Court of Appeals refused to overturn the ruling of the trial court.

Why Care?

This case represents the second time an Iowa appellate court has ruled that the state's right-to-farm law is unconstitutional as applied to a landowner existing before the complained about farming operation. At this time, there are

no reported opinions of how this case would turn out if McIlrath moved in after the Prestage Farm had opened the confined hog farm. Iowa's right-to-farm law may be constitutional as applied in that case. In the case of a property owner buying in after the confined hog farm opened, the property owner would have been aware of the nuisance before moving in and could have taken steps to mitigate the nuisances impact. The Iowa appellate courts have yet to consider that fact pattern.

No state court has yet to follow the Iowa Supreme Court when presented with similar fact patterns as *Gacke*. State courts have rejected the view that their states' right-to-farm laws can be unconstitutional as-applied to landowners existing before the establishment of the farming operation. Maryland has no reported cases involving the right-to-farm law, so this is an unanswered question in Maryland at this time. Although how Maryland's right-to-farm law operates, requiring mediation before going to court, it seems unlikely a court would find the law unconstitutional as applied (but remember that is a guess by me, so it holds no true legal value).

To learn more about right-to-farm laws, check out Lori Lynch's and my [fact sheet overviewing Maryland's law](#). You can also check out past right-farm-law posts from my other blog [here](#).

References

McIlrath v. Prestage Farms of Iowa, L.L.C., No. 15-1599, 2016 WL 6902328 (Iowa Ct. App. Nov. 23, 2016).

From: Cheri Loest
Sent: Friday, February 5, 2021 3:18 PM
To: Gary Vetter <gary@co.yankton.sd.us>
Subject: Fw: New Contact Us Message

For the public record. - Cheri

From: Intuvio Solutions CMS <noreply@intuviosolutions.com>
Sent: Thursday, February 4, 2021 1:35 PM
To: Cheri Loest <cheri@co.yankton.sd.us>
Subject: New Contact Us Message

You have received a Contact Us Message from your website.

Name: Kerry Carden
Address: 157 Hideaway Dr.
City/State/Zip: Mission Hill, South Dakota 57046
Email:
Phone:
Message:

The farming group most vocal concerning regulation appears to be CAFOs. There is not a lot of input from organic farmers, vineyard and orchard growers, apiaries, or other small operations. These groups would diversify our farm economy but are hampered and driven out by the big Ag farmers' farming practices. Their monoculture practices supported by use of herbicides and GMO crops, and need for large land holdings discourages diversity of what is raised. Big Ag and CAFOs often show little consideration for herbicide drift or wildlife habitats enhancement. In this regards, I think regulations should be more stringent as opposed to encouraging concentration farming practices. Please consider that they operate 24/7 causing the odors (indicators of good and bad conditions), high noise levels, visual effects, heavy road usage, soil and wildlife enhancement or degradation, and wealth (land) concentration among others affects, to be magnified. Please do not strip away the rights of any landowner (big or small farmer or acreage owner) to protect themselves from harmful practices. Thank you